

# Exhibit A

GB43CASS

Sentencing

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

16-CR-00414 (JSR)

ANDREW CASPERSEN,

Defendant.

New York, N.Y.  
November 4, 2016  
2:00 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the  
Southern District of New York

CHRISTINE I. MAGDO

Assistant United States Attorney

BRACEWELL, LLP

Attorneys for Defendant

PAUL L. SHECHTMAN

MARGARET LYNAUGH

GB43CASS

Sentencing

1 THE DEPUTY CLERK: Will the parties please identify  
2 themselves for the record.

3 MS. MAGDO: Good afternoon, your Honor. Assistant  
4 United States Attorney Christine Magdo on behalf the  
5 government. With me at counsel table is Criminal Investigator  
6 Kurt Hafer of our office. Good afternoon.

7 THE COURT: Good afternoon.

8 MR. SHECHTMAN: Good afternoon, your Honor. Paul  
9 Shechtman for Mr. Caspersen, and Maggie Lynaugh is with me from  
10 my law firm, and obviously Mr. Caspersen is here.

11 THE COURT: Good afternoon. Please be seated. We're  
12 here for sentencing.

13 Before we turn to the interesting gambling disorder  
14 issue, I think we need to first talk about the guideline  
15 calculation. So, the presentence report has the total offense  
16 level at 34, the criminal history category at I, and the  
17 guideline range at 151 to 188 months.

18 Both sides seem to agree to that, although each side  
19 sort of hints that they have minor disagreements with that.  
20 The government seems to suggest that the Court should maybe  
21 have a higher guideline range based on loss amount.

22 MS. MAGDO: No, your Honor, we're not suggesting a  
23 higher range. We're just suggesting that in this case, the  
24 guidelines actually underestimate the seriousness of the loss  
25 amount.

1 THE COURT: Okay. And defense counsel has some  
2 problems with I think the broker enhancement, broker  
3 adjustment.

4 MR. SHECHTMAN: Again, your Honor, no. It may  
5 underscore the fact that some of these enhancements have an  
6 arbitrary quality to them, but it certainly fits and applies,  
7 and that's why we agreed to it.

8 THE COURT: Okay. So, I'll adopt the presentence  
9 report calculation, total offense level of 34, criminal history  
10 category of I, guideline range of 151 to 188 months.

11 But I want to note at the outset, in case the  
12 government wants to comment, that as I indicated at the time of  
13 plea, I think the calculation borders on the irrational.  
14 First, the great bulk of the calculation comes about from the  
15 loss amount. So, the total offense level is 34, 22 points are  
16 based on the loss amount. I don't see why loss amount should  
17 occupy in this sense, as it does in so many guideline cases,  
18 such an inordinate position, overwhelming every other factor.

19 And I also don't understand what the rational basis  
20 was for the commission coming up with any particular figure.

21 The defense has put in indications when the guidelines  
22 were first promulgated, the same loss amount would have led to  
23 an addition of 11 points, rather than 22 points. I'm not sure  
24 what's changed between then and now that makes suddenly makes  
25 this offense so much more guideline culpable. But maybe the

1 government wants to say something about that.

2 MS. MAGDO: Your Honor, I'm not certainly an expert on  
3 why the guidelines have changed, but my understanding is that  
4 Congress had the intent to punish white collar criminals in a  
5 way that was more equal to the way they were punishing people  
6 who had committed drug offenses and violent crimes offenses.

7 THE COURT: When the guidelines were first promulgated  
8 in the early 1980s, all the guidelines were intended to reflect  
9 in some sense what was the mean average, except for white  
10 collar crimes, which were intended to be higher. And since  
11 then, they've been ratcheted up every few years so that they're  
12 now many times what they were when the guidelines first came in  
13 and said that they should be higher than they had been  
14 historically. So what's rational about that?

15 MS. MAGDO: I believe actually in 2014, they were  
16 ratcheted down slightly.

17 THE COURT: That was the first time that that had  
18 happened, but that was after all these major increases that  
19 I've just referred to.

20 MS. MAGDO: Well, as I said in my sentencing  
21 submission, the guidelines are a starting point --

22 THE COURT: I consider them. Consider them  
23 considered. But I don't see why they are a main starting  
24 point. I think they are, to be frank, a pernicious starting  
25 point, because they carry the aura but not the reality of

GB43CASS

Sentencing

1 something that is rationally arrived at.

2 Where many of these numbers come from and why, for  
3 example, should the amount of the loss be given so much more  
4 weight than, for example, the abuse of trust, which is, you so  
5 correctly point out in your memoranda, was one of the most  
6 dislikeable things that this defendant committed in his  
7 substantial fraud. And yet that is what, two points or  
8 something like that? As opposed to 22 points for the loss? It  
9 makes no sense.

10 MS. MAGDO: I think we can agree that the loss amount  
11 should factor in in some way in sentencing an individual.

12 THE COURT: We can agree on that. Maybe we'll just  
13 leave it at that.

14 So let's turn to the gambling disorder which is  
15 offered as a mitigating factor. I think that the defense has a  
16 witness they'd like to call.

17 MR. SHECHTMAN: We do, your Honor.

18 THE COURT: Go ahead.

19 MR. SHECHTMAN: The defense would call Dr. Marc  
20 Potenza.

21 THE DEPUTY CLERK: Please take the witness stand.  
22 Remain standing.

23 (Witness sworn)

24 THE DEPUTY CLERK: Please be seated. State your name  
25 and spell it slowly for the record.

GB43CASS

Potenza - direct

1 THE WITNESS: Marc Nicholas Potenza. Marc, M-A-R-C,  
2 Nicholas, N-I-C-H-O-L-A-S, P-O-T-E-N-Z-A.

3 THE COURT: So, since this is offered in effect as a  
4 mitigating factor, the defense bears the burden, so we'll hear  
5 first from the defense. Go ahead, Mr. Shechtman.

6 MR. SHECHTMAN: Judge, I sent the Court and the  
7 government yesterday a copy of Dr. Potenza's curricula vitae.  
8 My intent --

9 THE COURT: It was much too long to read, but I filed  
10 it away. I gathered from your submissions that, first, that he  
11 was had a very distinguished academic career at Yale, it's not  
12 Swarthmore, of course, as you, Mr. Shechtman, would recognize.  
13 But it's not a bad place. And now he's a well-credentialed,  
14 well-published authority on addiction and gambling addiction in  
15 particular, yes?

16 MR. SHECHTMAN: That's correct, your Honor.

17 THE COURT: So noticed.

18 MR. SHECHTMAN: I'll proceed.

19 MARC N. POTENZA,

20 called as a witness by the Defendant,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SHECHTMAN:

24 Q. Dr. Potenza, what drew you to study compulsive gambling?

25 A. Back when I was in the medical scientist training program,

GB43CASS

Potenza - direct

1 which is a combined M.D. PhD program, I was thinking about  
2 which area on which to focus my research. And I thought that  
3 the brain was the most complicated organ in the body, and that  
4 during my lifetime we were not going to understand fully how it  
5 functions, particularly with respect to health and illness, and  
6 thought I would focus on neuroscience.

7 THE COURT: So, I've read your report, which is very  
8 helpful. But it seems, reading between the lines, that we  
9 don't know very much about gambling addiction; particularly, we  
10 don't know much about what causes it. We have various  
11 theories, you have theories, other people have theories. But  
12 it is something of a mystery still. Yes?

13 THE WITNESS: I think that we've learned a lot over  
14 the past several decades, but we still have a lot more to  
15 understand, so there are many unanswered questions.

16 THE COURT: Well, for example, when we're dealing with  
17 a chemical addiction, like a drug addiction, we can test  
18 various chemical reactions in the brain, the drug is ingested,  
19 things happen chemically as a result.

20 Here, we don't really know why whatever is happening  
21 in the brain, how it's being brought about. Do I have that  
22 right?

23 THE WITNESS: I think in many ways, yes, that is  
24 correct. We don't have the same set of animal models, for  
25 example. Although there are inroads, Catharine Winstanley and



GB43CASS

Potenza - direct

1 others are trying to address this in ways that I think people  
2 in the substance abuse field have been addressing this for a  
3 number of decades. But we're far behind.

4 THE COURT: So, what we really have then, if I  
5 understand your report right, is we have a series of symptoms  
6 that appear to be common to a meaningful number of people and  
7 that are characterized in the DSM by various criteria. Yes?

8 THE WITNESS: Yes, and I think that's similar to a  
9 number of other psychiatric disorders.

10 THE COURT: So, but even those have changed, if I  
11 understand the evolution from the DSM-3 to the DSM-5. There  
12 has been some change, for example, illegal activity is no  
13 longer a necessary criterion. Yes?

14 THE WITNESS: It is no longer an inclusionary  
15 criterion for pathological gambling or now gambling disorder.

16 THE COURT: Because one could be a compulsive gambler  
17 and never break the law at all.

18 THE WITNESS: One could. It is also not there for  
19 substance use disorders or substance addictions, and, like with  
20 gambling disorder, there are links with illegal activities for  
21 substance use disorders.

22 THE COURT: So, is it your view that there exists an  
23 effective treatment for gambling disorder?

24 THE WITNESS: I've been treating people for about 20  
25 years in our public gambling treatment service in Connecticut.

1 I believe we have striven to make advances with respect to both  
2 the behavioral therapies and using empirically validated  
3 therapies, behavioral therapies. We've also undertaken  
4 randomized clinical trials to see if medications might be  
5 helpful for people with gambling problems. But currently,  
6 there are no medications that have an FDA indication for  
7 pathological gambling or gambling disorder.

8 THE COURT: If I understand correctly, some of the  
9 studies indicate that persons with gambling disorder relapse  
10 80, 90 percent of the time.

11 THE WITNESS: I think that the course of gambling  
12 disorder, we don't understand quite as well as, say, for  
13 substance use disorders, because there have been fewer  
14 longitudinal studies to investigate this.

15 That being said, there is also controversy as to what  
16 constitutes a relapse, whether it be a slip, a lapse, or one  
17 might consider a full-blown relapse.

18 THE COURT: So, let's take Mr. Caspersen. So, my  
19 understanding is that he engaged in irrational investment  
20 gambling, for lack of a better way to put it, for many years.  
21 Yes?

22 THE WITNESS: Yes, I think that his pattern of using  
23 options was highly risky and fits the definition of gambling.

24 THE COURT: What reason is there to believe that even  
25 though he's now receiving some treatment, that he won't resume

1 the same compulsive behavior after a moderate period of time?

2 THE WITNESS: Well, I think that while one cannot say  
3 with absolute certainty what the future might hold, there may  
4 be factors that people have reported as being linked to better  
5 versus worse treatment outcome.

6 So, for example, in a study of Gamblers Anonymous, it  
7 was found that attendance and participation in particular as  
8 well as social supports were related to maintenance of  
9 abstinence versus relapse.

10 So I think those would be some of the factors that  
11 might be valuable or worthwhile to consider with respect to the  
12 hope of a more positive outcome.

13 THE COURT: Hope is a wonderful thing, but my  
14 understanding, first of all, is that psychiatrists and  
15 psychologists are not so good at predicting the future as  
16 opposed to analyzing the past. And that in any event, with  
17 something as still uncertain in its causes and its treatment as  
18 gambling disorder, that predicting the future is pretty  
19 problematic. Yes?

20 THE WITNESS: I might see it a little bit differently,  
21 given that part of my job during the week is to see people and  
22 try to help people not experience the harms that they have  
23 experienced from gambling and the harms that other people have  
24 experienced from gambling. So, I try to utilize the tools that  
25 we have, and the information that we have at the present time,

GB43CASS

Potenza - direct

1 to help people maintain abstinence and not experience the harms  
2 that they have experienced or that others have experienced from  
3 their gambling.

4 THE COURT: Are you familiar with an article in the  
5 Canadian Medical Association Journal called "Gambling Treatment  
6 Options: A Roll of the Dice"?

7 THE WITNESS: It's not coming to my mind. I'm not  
8 sure if I've read it.

9 THE COURT: That particular source in that particular  
10 publication said that a person with gambling disorder relapse  
11 about 90 percent of the time.

12 You came to the conclusion Mr. Caspersen had a severe  
13 gambling disorder. Yes?

14 THE WITNESS: Correct.

15 THE COURT: And that was based on a  
16 two-and-a-half-hour interview plus a review of his records.

17 THE WITNESS: Correct.

18 THE COURT: Is that an adequate basis to make such a  
19 diagnosis?

20 THE WITNESS: I followed the approach that I use in  
21 making clinical diagnoses by performing a psychiatric  
22 evaluation. And that is the approach that I use within  
23 clinical settings and other settings.

24 THE COURT: Well, I'm just wondering, how can one make  
25 such a substantial diagnosis on the basis of such a short

1 interview?

2 THE WITNESS: Based on the interview, and the  
3 collateral information and the current DSM criteria for  
4 gambling disorder, which state that one needs to meet four or  
5 more of the nine inclusionary criterion, and if they meet eight  
6 or more of the criterion that is a severe gambling disorder.  
7 That is the basis of my conclusion.

8 THE COURT: He also suffers from alcoholism, yes?

9 THE WITNESS: Yes, he -- he currently at the time of  
10 the interview, he was abstinent from alcohol, by his report I  
11 think since March of this year. But yes, he met the criteria  
12 for alcohol use disorder.

13 THE COURT: And from depression?

14 THE WITNESS: Yes, he has a history of depression by  
15 my interview.

16 THE COURT: So, putting all that together, wouldn't  
17 his likelihood of relapse be even higher?

18 THE WITNESS: Well, I think that gambling addiction  
19 disorder or pathological gambling frequently co-occurs with  
20 other psychiatric disorders, including alcohol use disorders  
21 and major depression. And we have proposed that based on the  
22 existing data, that that may actually be helpful with respect  
23 to guiding the specific therapies.

24 So, I'm not aware that that would necessarily increase  
25 the risk for relapse. But I think, from my perspective, I

GB43CASS

Potenza - direct

1 would try to target those domains within a clinical treatment  
2 setting in order to optimize the likelihood that he would not  
3 relapse.

4 THE COURT: All right. Go ahead, counsel. Any  
5 questions you wanted to put.

6 BY MR. SHECHTMAN:

7 Q. Dr. Potenza, I take it I'm right that the DSM-3, 4 and 5  
8 classify compulsive gambling as a mental illness. Do you agree  
9 with that?

10 A. I do.

11 Q. Why?

12 A. Well --

13 THE COURT: By the way, I'm sorry. This is a totally  
14 cheap shot, but I can't resist. Isn't it true that  
15 homosexuality was classified by the DSM-1 and 2 as a mental  
16 disorder?

17 THE WITNESS: That's my understanding.

18 THE COURT: So, perhaps this is not quite the most  
19 reliable publication.

20 THE WITNESS: Well, I think it's one of the main books  
21 of nomenclature for the psychiatric field. And I do think that  
22 as more knowledge is gained over time, that these books try to  
23 reflect the increases in knowledge.

24 So we can go back and look at, for example, in this  
25 case, teen dependence or tobacco use disorder, and if one goes

1 back to the time of DSM 1 and 2, those were not considered as  
2 harmful as they are now. So, I think things evolve over time.

3 THE COURT: Yes, but what I guess frankly what I'm  
4 getting at is I wondered to what extent the DSM reflects, if  
5 you will, ideological views of the time as opposed to something  
6 more scientifically objective.

7 THE WITNESS: I think that that is a fair comment to  
8 bring up, and particularly in the area of psychiatry,  
9 psychology, where only over the past, say, quarter of a century  
10 have we gained better techniques to understand the biology.  
11 So, I think the field tries to incorporate knowledge in a  
12 meaningful way, and I having been involved in the DSM-5  
13 process, involved in the research work group, I can appreciate  
14 the importance that they place on understanding the  
15 neurobiology of these conditions.

16 THE COURT: Go ahead, counsel.

17 BY MR. SHECHTMAN:

18 Q. Why do you agree that this is a mental illness?

19 A. So, as a psychiatrist, I was trained to try to understand  
20 and help people with respect to psychological distressing or  
21 harmful thoughts or behaviors.

22 And I've seen a large number of people, several  
23 hundred people with gambling problems, and I've seen the impact  
24 that it can have on their, their mental states and their  
25 functioning, and believe that it is a very serious, can be a

1 very serious disorder for people.

2 Q. Pathological gambling or gambling disorder has been called  
3 an addiction without a drug. Is that an apt phrase, and what  
4 does it convey?

5 A. So, I think that it's an appropriate phrase. It's one that  
6 I've used at times. I think one can think of the term  
7 "addiction" and what it means and what it's derived from.

8 I think the use of the term "addiction" has varied  
9 over the course of history, derived from the Latin word meaning  
10 bound to or enslaved by. It was not linked to excessive  
11 substance use going back 100 years, excessive patterns of  
12 alcohol use. In the 1980s the DSM work group on substance use  
13 disorders I think felt almost unanimously that it could be  
14 defined by compulsive drug use.

15 In the 1990s, Howard Shaffer and others proposed  
16 several core elements of addiction, continued engagement in the  
17 behavior despite adverse consequences, compulsive engagement or  
18 diminished control over engagement in the behavior, and in a  
19 craving state that often preceded engagement in the behavior.

20 If one thinks of these as the core elements of  
21 addiction, it perhaps can be applied to a broader range of  
22 behaviors and substance use behaviors, and I think the data  
23 that have been gained over the past 20 years with respect to  
24 the neurobiological, genetic, co-occurring disorders,  
25 epidemiological clinical phenomenon, among other areas, led the



1 DSM-5 substance use disorder group to reclassify pathological  
2 gambling together with substance use disorders into a substance  
3 related and addictive disorders category.

4 Q. You agree with that categorization?

5 A. I do. Some of the -- the two work groups in which I was  
6 involved, the research work groups, I was asked the question  
7 whether gambling disorder and substance use disorders shared  
8 similar features or not. And to go through systematically the  
9 different domains.

10 And the other research work group looked at obsessive  
11 compulsive spectrum disorders and whether, for example,  
12 pathological gambling was similar to or distinguished from  
13 obsessive compulsive disorder. Those data were published and  
14 used by the work groups.

15 THE COURT: Well, my understanding is, correct me if  
16 I'm wrong, that even our understanding of addiction has changed  
17 considerably over the last few decades. And that, for example,  
18 certain addictive drugs like cocaine don't involve really  
19 serious withdrawal symptoms in the way other drugs do, yet they  
20 still act in an addictive way because they, if you will, trick  
21 the brain into thinking that the right choice is to use the  
22 drug. Do I have that basically right?

23 THE WITNESS: I think that there are both similar and  
24 unique aspects to different drugs. And so, for example, with  
25 cocaine, when one is coming off of an acute intoxication, there

GB43CASS

Potenza - direct

1 is often what people describe as a cocaine crash. So, for  
2 about the 24 hours after the high of the cocaine, people become  
3 very somnolent, difficult to rouse, and oftentimes, if they're  
4 in the emergency department, will pull the sheet over their  
5 head.

6 Opiates have a very different pattern of withdrawal.  
7 Kicking the habit and other terms like cold turkey are derived  
8 from opiate withdrawal. Because of the piloerection and the  
9 myoclonic jerks that people experience during opiate  
10 withdrawal. So each drug has a different --

11 THE COURT: That's a good point. So my question then  
12 is how does gambling disorder operate in that respect?

13 THE WITNESS: So there's been an inclusionary  
14 criterion for withdrawal in the DSM criteria for pathological  
15 gambling as well as gambling disorder. What that typically  
16 involves is some irritability or unease during the acute period  
17 of having gambled and then not gambling, and perhaps there  
18 being other, for example, occupational obligations that keep  
19 one from gambling when one is preoccupied with the urge to  
20 gamble. It is a criterion that's acknowledged by a good number  
21 of individuals, but population-based data suggests that it's  
22 less frequently acknowledged than, say, tolerance.

23 THE COURT: Counsel.

24 BY MR. SHECHTMAN:

25 Q. Dr. Potenza, the legal literature talks about psychological

1 gambling and sometimes uses the phrase, and some of the case  
2 law says "pathological gambling hijacks the brain." Is that a  
3 useful image?

4 A. It's a term that I try not to use, but I think the  
5 concept -- because it's a little dramatic for me, but I think  
6 the concept that the gambling behaviors and thoughts preoccupy  
7 an individual and essentially take priority over other  
8 obligations, I think is an apt one.

9 So one can think of one's time as being limited and  
10 one's, you know, motivating behaviors as fitting within that  
11 timeframe. And as gambling or substance use, whatever the  
12 focus of the addiction is, takes more and more time, it forces  
13 out the other areas of life functioning that I think are  
14 important.

15 Q. There have been brain imaging studies relating to  
16 compulsive gambling. What, if anything, do we learn from them?

17 A. Well, I think that the brain imaging field is at a  
18 relatively early stage. There are preliminary data that  
19 suggests that there are some similarities with substance use  
20 disorders, particularly with involvement of brain regions like  
21 the ventromedial prefrontal cortex and the ventral striatum.  
22 These are considered decision-making and reward-related  
23 regions, although they serve a large number of other functions.

24 But, some of the data suggests that there are linkages  
25 between gambling disorders and substance use disorders, come

GB43CASS

Potenza - direct

1 from use of a monetary processing task called the monetary  
2 incentive delay task. Where initially, Halmer and colleagues  
3 found that individuals with alcoholism showed blunted  
4 activation of the ventral striatum in anticipation of monetary  
5 reward. That finding was replicated by a group in Germany. It  
6 was subsequently shown that individuals who are family history  
7 positive versus family history negative for alcoholism also  
8 showed this blunted activation of the ventral striatum. So  
9 individuals have risk for addiction, as well as adolescents who  
10 are smokers versus non-smokers.

11 More recently, our group and one from Korea found that  
12 individuals with pathological gambling showed a similar pattern  
13 of a blunted ventral striatum activation in anticipation of  
14 monetary reward.

15 THE COURT: So, just to return to what I asked you  
16 earlier. My understanding from your own submission is this is  
17 at most suggestive, this is far from anything that is firmly  
18 established to a scientific certainty or anything like that.  
19 Right?

20 THE WITNESS: I agree with that. I think most of the  
21 imaging studies that have been performed to date are relatively  
22 small. And there are now efforts, for example, the ABCD  
23 Initiative is one where NIH is supporting data collection from  
24 starting at age 9 or 10, and they're targeting over a five-year  
25 period to get serial data, including brain imaging data, on

1 over 10,000 individuals.

2 THE COURT: So we might know a lot more in a few  
3 years.

4 THE WITNESS: I'm hopeful.

5 THE COURT: But I've got to sentence Mr. Caspersen  
6 today, unfortunately. So there we are. Go ahead.

7 BY MR. SHECHTMAN:

8 Q. The judge touched on this, but is there a relationship  
9 between pathological gambling and alcohol consumption?

10 A. Yes. I think that relationship is perhaps complex. There  
11 have been studies that suggest that as people drink more, they  
12 gamble more heavily. And gamble more heavily towards losses.  
13 There are also data that suggest that the two disorders  
14 co-occur more frequently than by chance, both in clinic-based  
15 data and in community population based data.

16 So there are data that suggests that there are both  
17 shared genetic and shared environmental contributions to the  
18 co-occurrence of pathological gambling and alcohol abuse or  
19 dependence, and that was a study involving male twins where one  
20 can make estimates of the genetic and environmental  
21 contributions.

22 Q. Is there a relationship between pathological gambling and  
23 depression and add to that life trauma?

24 A. Yes. So similarly is there a relationship between  
25 pathological gambling and major depression. Again, there are

1 higher odds that are seen in clinical and population based  
2 samples. There are also shared genetic contributions. The  
3 best fitting model in this case from the same cohort of male  
4 twins suggested that the overlap between the two was driven  
5 100 percent by genetic factors, although these models  
6 overestimate somewhat the genetic contributions. There is  
7 likely a substantial biological genetic link between the two.

8 THE COURT: I am not sure which way this cuts. So,  
9 are you saying someone who has a gambling disorder has it in  
10 part because of the depression, or are you saying the  
11 depression exists in part because of the gambling disorder, or  
12 what?

13 THE WITNESS: Or whether there is a common ideology to  
14 both conditions. One can make a plausible description of any  
15 of those three factors.

16 So one can, one of the inclusionary criteria for  
17 pathological gambling or gambling disorder is gambling to  
18 escape from a negative mood state or from dysphoria. So, if  
19 one experiences the depression, they may, for negative  
20 reinforcement purposes, so to take away the negative mood  
21 state, they may engage in gambling behaviors.

22 Alternatively, if one gambles excessively and, for  
23 example, loses large sums of money, that may have a negative  
24 impact on their mood, and may lead to depression, or there may  
25 be a common vulnerability factor for experiencing both

GB43CASS

Potenza - direct

1 disorders.

2 THE COURT: Well, so, if you have a drug addiction, my  
3 understanding is that a part of what goes on is that while you  
4 may take the drug originally to get pleasure, that eventually  
5 you need to take the drug just to feel normal physically. But  
6 I don't see quite how that translates into the gambling  
7 disorder situation. At least I didn't see any evidence, maybe  
8 I missed it, that Mr. Caspersen had to gamble to feel  
9 physically normal. It may have been he had to gamble to feel  
10 mentally normal, but not physically.

11 THE WITNESS: Yes. I think that that same logic can  
12 also be applied to gambling disorder. And it resonates with  
13 people who I see in treatment who say that, you know, over  
14 time, it's not about the money. It used to be a good day at  
15 the casino was winning \$100, but then a good day at the casino  
16 is losing the \$100, but losing it over eight or 10 hours,  
17 rather than over the first 20 minutes that they're there.

18 So there is something about the gambling behavior that  
19 is different, it brings them to a different state. And there  
20 are studies --

21 THE COURT: But my only point is saying it is more in  
22 the nature of a psychological change than a physical change.

23 THE WITNESS: Well, so there are physiological changes  
24 that occur when people gamble. Some of these differ in people  
25 with gambling problems and those without. Gerhard Meyer in

1 Germany obtained heart rate and pulse and biochemical measures  
2 of people as they gambled, people with varying level of  
3 gambling severity. Along with the --

4 THE COURT: Is that for people who gambled generally  
5 as opposed to people with gambling disorder?

6 THE WITNESS: So he was going into a casino, assessing  
7 their problem gambling severity, so whether they had a gambling  
8 problem or not, and was collecting the data so he could look at  
9 those sorts of questions.

10 THE COURT: I see.

11 Counsel.

12 BY MR. SHECHTMAN:

13 Q. And life trauma.

14 A. And life trauma. Yes, so there have been multiple studies  
15 that have looked at -- although not as many as in some other  
16 areas of problem pathological gambling -- that have looked at  
17 reports of trauma in individuals with gambling problems. And  
18 there are high rates of trauma that are reported, and some  
19 studies over 60 percent of individuals with gambling problems  
20 report emotional trauma, over 20 percent report sexual trauma,  
21 and there are links between pathological gambling and trauma  
22 related conditions, like post-traumatic stress disorder.

23 Q. Again, a question the judge touched on. Would you speak  
24 more broadly about the relationship between severe pathological  
25 gambling and crime and embezzlement and theft?



1 A. Yeah. So there have been studies, several studies that  
2 have looked at this question. Some have looked at data from  
3 population based studies, so Mariana Tosheko Stein did an  
4 analysis of different classes of individuals, a data driven  
5 approach, and found that it was the illegal behaviors tended to  
6 cluster in the most severe group of individuals with gambling  
7 problems. And that seems to fit with my clinical experience.  
8 And we've also looked at data from people calling from a  
9 gambling helpline and looked at people who reported illegal  
10 behaviors related to gambling versus those who did not, and  
11 there were factors that suggested there were more severe  
12 psychological, psychiatric concerns, as well as impacts like  
13 debt and suicidality.

14 THE COURT: But, again I'm not totally sure which way  
15 this cuts. If someone commits an embezzlement out of greed,  
16 let's say, they make a more or less rational determination, I  
17 can get away with it, and I'll be rich, and live the lifestyle  
18 that I always wanted. And then they're caught and they receive  
19 some honest prison time, and they say, hmm, I made the wrong  
20 bet, and I'm not going to do it again, because it's not -- the  
21 downside outweighs the upside.

22 But, if you have someone, as I understand what you're  
23 telling me about gambling disorder, they won't be making a  
24 rational choice. And therefore, it would take, one might  
25 argue, a much more severe sentence to really bring home to them

1 there is no way that even someone in their diminished state  
2 could understand that this is a bad bet.

3 So maybe this is not a question for you really, more  
4 for counsel. I'm not sure which way this cuts.

5 THE WITNESS: Well, and there may be individual  
6 differences within that group that I think are important to  
7 consider. I've seen a number of people in practice, clinical  
8 practice, who, for example, have led very what one might  
9 consider exemplary lives, but have embezzled money related to  
10 their gambling, but otherwise morally upstanding citizens. And  
11 those are some of the people actually I've seen over the longer  
12 term who have done well, and have given back to the community  
13 in a positive way.

14 THE COURT: Counsel.

15 BY MR. SHECHTMAN:

16 Q. When we spoke on Wednesday, you talked about one older  
17 woman who fell in that category. Would you tell the Court  
18 about that?

19 A. I think that there are several older women who I've seen in  
20 treatment who have had problems with casino gambling and have  
21 embezzled money. And, you know, some may volunteer time to  
22 help people with gambling problems, some go back to jobs and  
23 contribute to society in a meaningful way and have meaningful  
24 relationships.

25 Q. They taught me at my college that it's hard to prove a

1 negative. But, is there a sense of why some pathological  
2 gamblers don't steal?

3 A. Well, there may be differences, and I was touching bases on  
4 some of the illegal behavior data that we and other groups have  
5 looked at. There may be different individual differences that  
6 people have that they experience, either inherently or they  
7 experience in life experiences. And there are differences  
8 between people with gambling problems, and it is important to  
9 understand those individual differences.

10 Q. Opportunity play a role?

11 A. Also, with respect to opportunity, and I think that that  
12 does play a role with respect to gambling behaviors and the  
13 extent of gambling problems that people can experience. So  
14 having the opportunity to obtain or have large amounts of  
15 money, I think that's an important consideration.

16 When we were doing our initial study of gambling  
17 urges, and I solicited the advice of several people in the  
18 state who had more experience than I did at the time with  
19 respect to treating individuals with gambling problems, and  
20 they noted that one of the triggers for people is to come into  
21 a large amount of money, and that's one of the opportunities  
22 that I think may play a significant role for people with  
23 gambling problems. And some of the behavioral therapies work  
24 on financial management aspects, and whether other people are  
25 going to manage finances for the individual with the gambling

1 problem, for example, is sometimes a very important  
2 consideration.

3 THE COURT: So you think that the best thing I could  
4 do for Mr. Caspersen is put him on welfare and make sure he has  
5 no money whatsoever.

6 THE WITNESS: That wasn't the approach that we take in  
7 our clinic. But what we try to do is if there is a conservator  
8 who -- or some like a spouse, for example, who is may be  
9 engaged in Gam-Anon, may be able to able to set limits and help  
10 protect the vulnerabilities in someone who they may care for.  
11 That's more where I was going.

12 Q. How severe did you find Mr. Caspersen's gambling addiction  
13 to be?

14 A. As I mentioned briefly, I would grade it as a severe  
15 gambling disorder.

16 THE COURT: Meaning that he hits a large number of the  
17 criteria set forth in the DSM, yes?

18 THE WITNESS: Yes, but I should also mention that of  
19 all the people I've seen in treatment, I cannot recall anyone  
20 who had lost the amount of money that -- the financial amount  
21 of money that he did. I've seen people who have come in with  
22 six figure debts and went through bankruptcy. That's not -- I  
23 mean, I can think of a number of people. But this amount of  
24 money is --

25 THE COURT: In one sense, the reason the amounts of

1 money were so large is he was gambling in investments as  
2 opposed to gambling at the casino, correct?

3 THE WITNESS: I think he could gamble more money in  
4 this area, yeah.

5 THE COURT: Go ahead.

6 Q. For a part of 2013, for about seven months, from roughly  
7 six months from May to November, Mr. Caspersen did not gamble.  
8 Does that alter your conclusion about his pathology?

9 A. No. I still think he meets the criteria for a severe  
10 gambling disorder. There may be different factors, and some  
11 that we don't understand, that influence why people go from  
12 gambling large amounts of money to nothing. Same with  
13 substance use disorder and trying to understand those patterns  
14 I think is important.

15 With gambling problems, a number of people have told  
16 me that while they may feel the urge to gamble, they don't have  
17 the money at hand, so that can be one of the main factors. But  
18 there may be others. Sometimes, you know, I think that the  
19 number of people do feel ambivalent about gambling, people with  
20 gambling problems, and there may be things that sway them one  
21 way or the other. Something that triggers and moves them to  
22 gamble, and something that helps intervene and something  
23 that -- close friends, relatives, treatment providers,  
24 hopefully help them restrain them from gambling.

25 Q. I want to go back to a question that Judge Rakoff asked

1 you. He asked about physical symptoms. And I think when we  
2 spoke, you told me about a patient or patients suffering from  
3 pain and the effect of gambling on them?

4 A. So there have been some people who have chronic pain  
5 conditions who have reported to me that when they are in the  
6 process of gambling, that that kind of dissipates, it goes  
7 away. So this fits into this negative reinforcement model of  
8 getting to -- of gambling and perhaps gambling excessively in  
9 order to relieve an uncomfortable state.

10 THE COURT: Did Mr. Caspersen report that?

11 THE WITNESS: No.

12 Q. One gets the sense from the literature, and I think, again,  
13 Judge Rakoff alluded to this, that for many gamblers, money  
14 doesn't matter after a certain point. It's about being in the  
15 action. Is that consistent with your experience?

16 A. A number of people who I've seen with gambling problems do  
17 report that. That it's less about the wins and losses than it  
18 is about the act of gambling, and what they experience from  
19 gambling.

20 Q. Then again to my last question, to go back to another topic  
21 that Judge Rakoff asked you about, what can be done mitigate  
22 the risks of Mr. Caspersen recidivating?

23 A. I think that there are -- while there is a lot that we  
24 don't know about what is most helpful for people, there are  
25 factors that have been linked to successful treatment outcome.

1 Some of that is engagement in professional treatment, some of  
2 that is engagement in 12-step programs, so Gamblers Anonymous,  
3 which is modeled after Alcoholics Anonymous, has been around  
4 for more than half a century and is widely available around the  
5 world. Hasn't been as well studied as some other forms of  
6 treatment, I think because of its anonymous nature. But data  
7 do suggest, for example, from Nancy Petry's trial, that people  
8 who attend GA tend to fair better than those who do not with  
9 respect to gambling treatment outcome. And some of the factors  
10 such as adherence and participation and the associate support  
11 do appear linked to better treatment outcome within a group of  
12 people attending GA, so those would be I think important  
13 factors.

14 Q. I won't take you through all 12 steps, but I'll ask you  
15 about the first one and why you think it is significant.

16 A. Yes. So I think some people have described addictions as a  
17 disorder of decision making or as motivated behaviors gone  
18 awry, and I think that the first step that to admit that one is  
19 powerless over the behavior, that essentially removes that  
20 aspect of the decision-making process. And if people can  
21 accept that, and can accept that they cannot go back to  
22 gambling because it leads to all these negative consequences,  
23 then it removes that, and it actually empowers them to lead to  
24 more healthy lives.

25 Q. Mr. Caspersen is, as part of his therapy, has been

1 prescribed naltrexone, if I say it right. Will you tell the  
2 Court what that drug does.

3 A. Naltrexone blocks opioid receptors. It is a medication  
4 that has an FDA indication for opioid use disorders and alcohol  
5 use disorders. So going back now close to a quarter of a  
6 century, there were clinical trials that found that for people  
7 with alcohol use problems, that it seemed to target alcohol  
8 urges or cravings and lead to better outcomes. We, amongst  
9 other groups, have hypothesized it may be helpful for people  
10 with gambling problems based on that aspect as well as how it's  
11 thought to work with respect to influencing reward pathways in  
12 the brain. And there have been several placebo controlled  
13 trials that have found naltrexone to be superior to placebo,  
14 but the data are mixed and we don't have an FDA medication for  
15 gambling disorder.

16 Q. Just so the record is clear, you saw Mr. Caspersen for two  
17 and a half to three hours, reviewed his medical records, the  
18 option trading experts report, his own therapist's report, and  
19 his trading records. Do I have the universe?

20 A. Yes, that is correct.

21 MR. SHECHTMAN: Judge, I thank the Court.

22 THE COURT: All right. Any questions from government?

23 MS. MAGDO: Yes, your Honor.

24 CROSS-EXAMINATION

25 BY MS. MAGDO:



1 Q. Good afternoon, Dr. Potenza.

2 A. Good afternoon.

3 Q. So, you testified that you've seen hundreds of individuals  
4 with pathological gambling and other impulse control disorders,  
5 right?

6 A. Correct.

7 Q. And would it be fair to say that of those hundreds, there  
8 were many whose disorders you would character identify as  
9 severe?

10 A. Yes.

11 Q. And of those who had severe disorders who came in for  
12 treatment, they came for a variety of different reasons I  
13 imagine, right?

14 A. Correct.

15 Q. So maybe some of them came because they'd lost all their  
16 money?

17 A. Yeah.

18 Q. Some may have lost their house?

19 A. I'm not -- no one is coming to my mind with their house.  
20 But people have lost a lot of money, people have been sent by  
21 the legal system, particularly people with substance use  
22 problems, but also some people with gambling problems. There  
23 are a number of factors, spouses finding out about gambling  
24 behaviors.

25 Q. Okay. So, is it fair to say that the vast majority of

GB43CASS

Potenza - Cross

1 those that you've seen with a gambling disorder have not come  
2 because they've been arrested?

3 A. Majority have not come because they have been arrested,  
4 that is correct.

5 Q. I think you mentioned some things that you use. Some  
6 options that you use to treat people with gambling disorders.  
7 There is individual therapy, right?

8 A. Correct.

9 Q. Group therapy, GA meetings, right?

10 A. Group therapy. What was the --

11 Q. GA?

12 A. GA, yes.

13 Q. What about involving their families in treating. Can you  
14 explain how that would work?

15 A. Yes. So, I'm the medical director and the psychiatric  
16 consultant to the Problem Gambling Services Program for  
17 Connecticut. It's gone through various iterations over the  
18 past 20 years. But we have counselors within the program, some  
19 of whom, for examples, are social workers, and some who are  
20 very focused on involving family members, and it is something  
21 that we consider in treatment. Sometimes that's done in  
22 couples, sometime that's done individually, because sometimes  
23 it's helpful for spouses or partners to gain skills that will  
24 be helpful for themselves. Because oftentimes people who are  
25 close to people with gambling problems experience psychological

1 distress and maybe go through depression, anxiety. So we try  
2 to help them get the help that they need, as well as help them,  
3 assuming that they want to maintain the relationship and be in  
4 the dynamic relationship going forward, to help them gain  
5 skills that would be helpful for that relationship to be  
6 healthy.

7 Q. You mentioned that there are certain safeguards that are  
8 sometimes put in place, such as having a conservator take over  
9 an individual's assets. Is that something you frequently use  
10 in therapy or in connection with therapy?

11 A. So, having someone help with financial management more  
12 broadly, whether that's an official conservator, that's less,  
13 less frequent than perhaps not having the person have credit  
14 cards, not -- you know, having an amount of money that they get  
15 over a certain period of time to allow them to get done what  
16 they need to get done, but to minimize the risk of getting into  
17 a place where they accrue, for example, credit card debt.

18 Q. Do any other safeguards come to mind that you put in place  
19 to make sure that people aren't subject to temptation that  
20 causes the behavior or that brings on the behavior?

21 A. Well, there are a number of options that we consider and  
22 that we may implement on a patient-by-patient basis. Some of  
23 that involves skill building, so having people deal more  
24 effectively with triggers. So sometimes people are not aware  
25 of those triggers, sometimes people are not aware of the

1 internal stakes that are generated by those triggers, so  
2 helping them manage. Identify those and manage those in a more  
3 healthy way I think is important.

4 Some of it depends on the type of gambling that's  
5 problematic. So, in Connecticut we have two large casinos, two  
6 of the world's largest casinos, so a number of people I see  
7 have problems with casino gambling, and both casinos in  
8 gambling have self-exclusion options. So some people  
9 self-exclude in order to minimize the temptation for casino  
10 gambling, for example.

11 Q. So following on that example, if you had a patient who was  
12 employed at a casino, for example, and had trouble with casino  
13 gambling, would you encourage that patient to find a different  
14 job?

15 A. I would go over the potential risk of exposing one to being  
16 at a casino and to consider that.

17 Q. Do you find that these types of precautions are met with  
18 success on at least some occasions?

19 A. Yes.

20 Q. So, those people who have gambling disorder -- and I just  
21 want to clarify what you've said in your report and just make  
22 sure we're all on the same page. They haven't lost their  
23 ability to control their behavior. I believe what you wrote is  
24 that they have diminished self-control. Can you explain what  
25 that means?

1 A. Yeah. So I think this applies to addictions more broadly.  
2 That it is a decision-making process whether or not to engage  
3 in a motivating behavior. And that, that process I think is  
4 not operating in a healthy fashion in people with addictions,  
5 including with gambling disorder.

6 Q. Now, a couple questions specific to the defendant in this  
7 case. You mentioned in your report, and I quote from page 23,  
8 that the defendant reports having struggled with trying to stop  
9 trading, setting self-imposed limits, and then breaking them.  
10 Now, you start the sentence off with "he reports," so that's  
11 something that he told you, right?

12 A. Hmm-hmm.

13 Q. That's not something that you verified or were able to  
14 verify, right?

15 A. Well, in a psychiatric interview, that's the language that  
16 I use. It's done usually on a one-to-one basis, and people are  
17 sharing information. For struggles, it's an internal state.  
18 It's kind of like how do you assess depression. You know, how  
19 do you assess someone's internal mood state. And it's usually  
20 through direct asking and trying to understand it within the  
21 context.

22 THE COURT: But I think what the prosecutor is trying  
23 to get at is the psychiatrist is necessarily dependent for  
24 information to a substantial degree on what the patient tells  
25 the psychiatrist. And if the patient has a motive to lie, then

1 that information might not be as reliable as it would otherwise  
2 be.

3 So, the question is, in this case, theoretically,  
4 Mr. Caspersen has a motive to want to be diagnosed as a severe  
5 gambling addict. So, was there any way, other than the -- you  
6 had some records, but was there anything else that was done to  
7 sort of test whether he was giving you the truth, the whole  
8 truth, and nothing but the truth, as opposed to an  
9 exaggeration, for example?

10 THE WITNESS: Well, in looking through the records  
11 that were provided to me as collateral information, what he  
12 reported to me seemed to fit well with the records with respect  
13 to things like preoccupation and placing of options, like,  
14 right when the -- when the market opened, the -- it seemed  
15 genuine to me during the interview, and it seemed to fit with  
16 the psychiatric report for people who had been seeing him over  
17 a longer period of time and arguably may have known him better  
18 through more repeated contact.

19 THE COURT: The earlier questions put by the  
20 prosecutor, I wasn't quite sure what she was getting at, but  
21 she seemed to be suggesting that the Court might want to  
22 imprison Mr. Caspersen in part because it would take him away  
23 from all temptation. I concede, I'm sure the warden would make  
24 an excellent fiduciary of his assets, but I don't know if this  
25 is within your area of expertise, but are there respects in

1 which imprisonment would in your view make his condition worse?

2 THE WITNESS: Well, I have interviewed some people in  
3 prison. And it doesn't -- there is, one, there is gambling  
4 that goes on in prison. There isn't always optimal access to  
5 treatment in prison. So I think there are some aspects of  
6 imprisonment that may not be very good.

7 THE COURT: Counsel.

8 BY MS. MAGDO:

9 Q. You mentioned that you -- the things that Mr. Caspersen  
10 told you in your assessment were consistent with the reports of  
11 other therapists that you had reviewed. So, I believe you  
12 reviewed a report or a report of Dr. Goldman. And isn't it  
13 true that Dr. Goldman has only been the defendant's treating  
14 psychiatrist after his arrest?

15 A. That's my understanding, yes.

16 Q. The notes that you reviewed from prior to his arrest, those  
17 were from 2012 and 2013, right?

18 A. And some I think earlier too, from the early 2000s.

19 Q. So in the early 2000 reports, those were purely medical  
20 reports as opposed to psychological reports, right?

21 A. Yes. There may have been a psychological testing, I don't  
22 recall the date of that.

23 Q. For the most part, the pre-arrest psychological report that  
24 you relied on are the notes from Dr. Brody in his seven  
25 sessions with Mr. Caspersen, right?

1 A. That's my recollection.

2 Q. Okay. And in those notes, did the defendant say to  
3 Dr. Brody that he had stopped his gambling behavior, if you  
4 recall?

5 A. I don't recall whether he had mentioned that. I know that  
6 there was more of a focus on the gambling after the arrest. I  
7 think that my experience with people with gambling problems is  
8 that oftentimes it is difficult for them to come into  
9 treatment, and I think part of that may have occurred early in  
10 the 2000s. He may have been a bit more forthcoming later on,  
11 around 2012.

12 But I think that it's not uncommon for me to see there  
13 being different barriers, be it guilt, embarrassment, shame, be  
14 it ambivalence about acknowledging the gambling problem and  
15 addressing the gambling problem. It's consistent with what  
16 I've encountered, and I think data suggests that it's about  
17 10 percent of individuals with gambling problems who engage in  
18 some form of treatment.

19 Q. I guess what I'd like to differentiate between is the  
20 treatment that he had after he was arrested. By that point, he  
21 knows that he's been charged with crimes, and he knows that he  
22 will eventually be sentenced. Right?

23 A. I --

24 Q. Presumably?

25 A. I presume so.



GB43CASS

Potenza - Cross

1 Q. So as the judge implied --

2 THE COURT: Well, if he doesn't know that by now, he's  
3 under a great illusion.

4 MS. MAGDO: Right.

5 Q. My point is that in the therapy that he engaged in after he  
6 was arrested, didn't he have an incentive to exaggerate his  
7 symptoms, knowing this was in preparation for sentencing?

8 I'm not asking whether he did or not. Is it logical  
9 to assume that one would have a different incentive after one  
10 is arrested than before one is arrested?

11 A. That's one possibility. But it's not the only possibility.  
12 I think that as his trading records indicate, he was gambling  
13 large amounts of money, and I imagine -- and it's consistent  
14 with his reports that this was associated with significant  
15 psychological distress.

16 Q. Are you aware that by the time he sought treatment, in  
17 November 2012, he had already committed a fraud of over \$2  
18 million? Yes?

19 A. Yes.

20 Q. Are you aware that he lied to that therapist, that, for  
21 example, he said that he was actively pursuing career options  
22 outside of the financial services industry?

23 A. Well, lying about gambling behaviors is actually one of the  
24 criteria that persists in DSM-5, so again, it wouldn't surprise  
25 me. I think it speaks to the ambivalence that many people have

1 about giving up gambling.

2 Q. And isn't it true that Dr. Brody recommended that he hire a  
3 financial manager to stand between him and his remaining  
4 assets?

5 A. That may well be true.

6 Q. Do you know whether he did that?

7 A. I don't believe that that happened, but I'm not certain.

8 Q. So, would you agree with Dr. Brody's conclusion in his  
9 report that, prior to his arrest, earlier this year,  
10 Mr. Caspersen had not made any serious attempts to stop  
11 gambling?

12 MR. SHECHTMAN: Judge, I'll stipulate to that. But he  
13 couldn't say that prior to the arrest, because this is 2012.  
14 So there's --

15 MS. MAGDO: I'm sorry. Not Dr. Brody. Dr. Goldman's  
16 assessment post-arrest. I misspoke.

17 Q. Dr. Goldman, who has been the defendant's treating  
18 psychiatrist since April of this year who has been seeing him  
19 twice a week. And in his report, which I believe you reviewed,  
20 he concludes that the defendant never made any serious effort  
21 to stop gambling.

22 Do you agree with that conclusion?

23 A. I think it depends on what you describe as a serious  
24 effort. I think that he did not engage in formal treatment,  
25 which would have been a more serious effort. I imagine that he

1 may have struggled with his behavior, and that is consistent  
2 with what he reported with the self-imposed limits.

3 THE COURT: A variation on that, assuming he didn't  
4 make a serious effort, on the one hand, that might be  
5 consistent with his not taking the problems and deceptions he was  
6 imposing on others very seriously. But on the other hand, it  
7 might just simply reflect the severity of his own gambling  
8 disorder. Yes?

9 THE WITNESS: Yes. That's my feeling, my impression.

10 Q. I'd just like to go briefly over some other psychiatric  
11 disorders that are in the DSM-5 I believe. Exhibitionist  
12 disorder. Are you familiar with that?

13 A. It's not an area that I focused on.

14 Q. Would you say that people who have this disorder have a  
15 diminished ability to stop exposing themselves to other people?

16 A. So, people who seek treatment for or engage in  
17 exhibitionist behavior I would imagine do have some impaired  
18 self-control over their behaviors. Although, I can't recall  
19 having seen someone with exhibitionism, so it is really not my  
20 area of focus in psychiatry.

21 THE COURT: Counsel, where do you see -- I'm looking  
22 at the DSM criteria, DSM-5 criteria for gambling disorder. And  
23 I'm not seeing exhibitionism. Maybe I'm missing it.

24 MS. MAGDO: I'm sorry. I'm moving on to other  
25 disorders, not gambling disorders.

1 THE COURT: Oh.

2 MS. MAGDO: But other disorders that may lead to  
3 antisocial or illegal conduct, and I'm just trying to elicit  
4 that these are also classified as mental illnesses and mental  
5 disorders in the DSM-5, and that these disorders such as  
6 pyromania, kleptomania, pedophilic disorder, may make it more  
7 difficult for people to control these behaviors. That's all I  
8 want him to opine on.

9 THE COURT: Okay. I thought you were making a comment  
10 on the current political contest for the presidential election,  
11 but I guess I was wrong. Go ahead.

12 MS. MAGDO: I hadn't gotten to sexual sadism disorder  
13 yet, which is a thing.

14 Q. So is it fair to say that people who have these disorders  
15 may have some impaired ability to control their behaviors?

16 A. I think impaired impulse control does apply to a broad  
17 range of psychiatric conditions, across different  
18 categorizations. I think the DSM-5 as compared to the DSM-4  
19 was trying to take what was a heterogeneous grouping of  
20 disorders, in which pathological gambling was placed, and when  
21 it was classified with kleptomania and pyromania, and separate  
22 it from and include it in the addictive disorders. And now  
23 that what used to be impulse control disorders not elsewhere  
24 classified in DSM-4 is now disruptive impulse control and  
25 conduct disorders.

1           So they've grouped together disorders that are more  
2 categorized by going up against social norms, if you will, and  
3 removed gambling disorder together with the addictive and  
4 substance abuse.

5       Q. That's arbitrary. If we lived in a society where gambling  
6 were illegal, it would be next to kleptomania, presumably.

7       A. Well, I'm not going to speculate.

8       Q. My point simply is that these disorders, maybe they're not  
9 in the same chapter of the DSM, they have certain things in  
10 common. Namely, that they may impair somebody's ability to  
11 control their behavior. I'm opposing that to disorders where  
12 someone has no ability whatsoever to control their behavior.

13           So would you say that these disorders that I've named  
14 have that in common, they diminish someone's capacity to  
15 control their behavior?

16       A. I think that having no control over one's behavior is  
17 not -- I can't think of any instances where that happens on a  
18 regular basis. I think it is more that a number of conditions  
19 are categorized by impaired impulse control. And it goes  
20 across a broad range of categories.

21       Q. For example, someone who is diagnosed with pedophilic  
22 disorder, do you know, is that a mitigating factor for someone  
23 who has committed a crime of child molestation?

24           THE COURT: Counsel, these are fair arguments when we  
25 hear argument from counsel, but I don't think it really is a

1 question for this witness. You can certainly make that  
2 argument in a few minutes when I hear from counsel on this.

3 MS. MAGDO: That's fine. Thank you, your Honor.

4 THE COURT: Very good. Anything further from defense?

5 MR. SHECHTMAN: Nothing, your Honor.

6 THE COURT: Thank you so much. You may step down.

7 THE WITNESS: Thank you.

8 (Witness excused)

9 THE COURT: So, before we turn to other aspects of  
10 this sentence, let me hear from counsel and I'll tell you what  
11 my initial take on this is, subject to being further influenced  
12 by counsel.

13 So, I think that while we don't know nearly as much  
14 about it as we know about some other disorders, I think it is  
15 more likely than not that there is such a thing as gambling  
16 disorder and that Mr. Caspersen suffered from it, and that it  
17 diminished his ability to make rational decisions. What  
18 follows from all that is less clear.

19 But just on those propositions, let me hear if counsel  
20 want to make further argument before I adopt those very limited  
21 initial determinations.

22 MR. SHECHTMAN: Judge, I don't have further argument.  
23 Our point on calling Dr. Potenza was to establish just those  
24 points. I think the question what follows from that is  
25 sentencing.

1 THE COURT: We'll get to that in a minute.

2 MR. SHECHTMAN: I mean that not glibly. But what  
3 follows from that is a very difficult moral judgment for the  
4 Court. And what's important to us is to realize that this is a  
5 fellow with a severe, most severe pathological gambling  
6 problem. This is a fellow who acted irrationally for a long  
7 period of time as to his own money and then as to others. And  
8 that all of that should weigh heavily in the balance this  
9 afternoon.

10 THE COURT: Okay. Let me hear from the government.

11 MS. MAGDO: Your Honor, I agree with Mr. Shechtman  
12 that the remaining issue is really what weight the Court should  
13 give to Mr. Caspersen's gambling addiction as a mitigating  
14 factor, rather than whether he had one. So, I don't oppose --

15 THE COURT: I think there are two aspects of that,  
16 that maybe you want to comment on. There was at least a  
17 suggestion in the government's papers, and there are certainly  
18 some reported cases and some statements of the sentencing  
19 commission at an earlier time, that suggest that it should have  
20 no weight. And I'm frank to say I don't understand that.  
21 Among the most fundamental programs of our legal system when it  
22 comes to crime are that we distinguish between people who  
23 commit crimes because they have made a rational choice that  
24 they would rather do something antisocial and harmful to others  
25 in order to gain their material benefits or other benefits, and

1 those who act with diminished capacity and who are to some  
2 degree not acting with a full deck.

3 And the reason the legal system makes that distinction  
4 is because the criminal justice system in particular is an  
5 expression, among other things, of fundamental moral  
6 principles.

7 So for example, there was a suggestion in one of the  
8 cases the government brought to my attention, although I think  
9 I interpreted it somewhat differently than the government did,  
10 that motive is irrelevant. How can that be?

11 MS. MAGDO: Well --

12 THE COURT: How can it be that if someone steals a  
13 loaf of bread, to take the classic example, because they're  
14 starving, they are treated the same as someone who steals a  
15 loaf of bread because they walked down street and saw a nice  
16 loaf of bread and thought he'd like to eat it right then and  
17 there rather than when he got home to his 20 other loaves of  
18 bread.

19 So, it seems to me it is relevant. Maybe I'm  
20 mischaracterizing government's position.

21 MS. MAGDO: That's certainly not our position, your  
22 Honor.

23 THE COURT: Okay.

24 MS. MAGDO: And we are not saying that gambling  
25 disorder could never be a mitigating factor in sentencing. And



1 we're not saying that it should be ignored here in this case.  
2 We are saying that the Court should consider it. But, that in  
3 the context of this defendant, and of these crimes, that there  
4 are other things that outweigh whatever mitigation the gambling  
5 disorder provides.

6 THE COURT: That's important. I want to get to those  
7 in a minute. But let me just raise the other concern I had  
8 while we're still on the gambling disorder.

9 I'm somewhat troubled by the fact that I don't think  
10 we know enough about gambling disorder to be able to speak of  
11 an effective treatment with any degree of confidence. There  
12 are some studies that suggest some drugs may help. There are  
13 some studies that suggest that cognitive therapy may help.  
14 These are all very soft, very preliminary, very many of them  
15 have not been attempted to be reproduced, many of them have not  
16 been subject to long-term studies. Our very excellent expert  
17 pointed out, for example, that statistically a lot of studies  
18 so far have dealt with very small numbers, and that a much  
19 bigger study is underway but it isn't there yet.

20 And so while gambling disorder may be a mitigating  
21 factor in the sense it reduces the immorality of the underlying  
22 behavior, if it is to take the extreme incurable -- and I'm not  
23 suggesting that that's the extreme, but just to give that as  
24 the end of the curve so to speak, then I'm not sure that it  
25 should weigh that much with the Court, because the guy will be

1 a recidivist.

2 Now, again, I'm not saying that's the situation here,  
3 but I'm concerned about that aspect of it. I don't know if  
4 either side wanted to comment on that.

5 Maybe that's more of a question for Mr. Shechtman.

6 MS. MAGDO: Actually, it is something that I've  
7 thought about a lot, which is that to the extent that he gets a  
8 break for his motivation or his lack of nefarious motivation at  
9 the outset, there is also the continuing disorder which he will  
10 presumably be struggling with to some extent or another for the  
11 rest of his life, just the way an alcoholic is never fully  
12 cured.

13 I think it is interesting, actually, in some child  
14 exploitation cases, the fact that the defendant does not have a  
15 sexual interest in children and was merely trading the child  
16 pornography for money, is actually a reason that people say  
17 that that person will not reoffend, because they weren't doing  
18 it out of a disorder. It makes perhaps the initial motivation  
19 more egregious and more worthy of punishment, but perhaps the  
20 recidivism risk is lower, whereas here it's just the opposite.

21 So, I think that's another reason that a significant  
22 sentence is warranted, especially because we submit that this  
23 defendant is already a bit of a recidivist. In 2012 he  
24 committed a fraud on his mother and his brother over \$2  
25 million. I mean, he's lucky that they didn't, you know, go to

1 the police with that. That's a crime. And yet, even that was  
2 only enough to deter him for a few months.

3 He's not undeterrable. He stopped trading for a long  
4 period in 2013. But, that was not enough to make him commit  
5 seriously to getting himself better. So that's why we think a  
6 substantial sentence is needed to convince him of that.

7 THE COURT: Mr. Shechtman, before we hear your general  
8 comments, I want to give you a chance to comment on the  
9 comments just raised.

10 MR. SHECHTMAN: Judge, let me say something just about  
11 the facts of 2013, which I shared with Ms. Magdo last week.  
12 And the facts really go to your question, your last question I  
13 think to Dr. Potenza about the severity of the gambling,  
14 meaning not dealing with this appropriately in 2012.

15 And Mr. Caspersen would be the first person to tell  
16 you that, that he didn't. 2012 treatment records end in March  
17 of 2013 with a statement "the gambling disorder is in  
18 remission." It wasn't.

19 And what's particularly interesting is in the first  
20 months of 2013, while he was getting treatment, he was getting  
21 relatively small -- for Mr. Caspersen -- distributions from the  
22 family, \$50,000, \$20,000, four or five of them. And each time  
23 he got them, money went directly to his trading account. He  
24 gambled and he lost everything.

25 And then in April 2013, he had no more. And when it

1 got to the end of that year, he had a \$4,900 bonus the end of  
2 2013. And the day he got it, he put it into his trading  
3 account, and he traded. So, I would say the 2013 story is the  
4 story of most severe pathological gambler.

5 Look, I've done this for a long time, you've done it  
6 and sat in judgment of people even longer, and I can't tell you  
7 that Andrew Caspersen won't recidivate. It's been a bad  
8 history since 2000.

9 But I can tell you that he is seeing a therapist who  
10 believes in him and has written the Court in a long portion of  
11 that letter why he thinks that there is a real likelihood here,  
12 a high likelihood here of non-recidivism.

13 I'm not going to point them out, but you've got four  
14 pathological gamblers in the back, two of them lawyers, and  
15 they have not gambled for a long period of time. And they have  
16 not gambled because the craziest thing is, Gamblers Anonymous,  
17 which, look, I would joke about Alcohol Anonymous, I would say  
18 it is a place where people go to date, right, I think people  
19 who take it seriously go for treatment.

20 And what you learn about Gamblers Anonymous, and what  
21 Mr. Caspersen's learned, is it's an extraordinary support  
22 group. He went Tuesday night and discouraged people from  
23 coming today in the view that you didn't need to see the faces  
24 of 30 pathological gamblers. But all of them have stayed out  
25 of trouble by propping each other up. His two supporters, his

1 two principal supporters are here today.

2 Look, they will tell you that there are people in that  
3 group who fail. But they'll also tell you that the vast  
4 majority of people in those groups have succeeded because of  
5 each other. And that is fairly remarkable. And I know how  
6 committed Andrew Caspersen is, I don't think he'll disappoint  
7 the Court.

8 I suppose if he does, we'll be back before you or  
9 somebody else and some other lawyer won't be able to say what  
10 I'm saying today. But, today what I'm saying is I don't think  
11 Andrew Caspersen is a high risk of recidivism.

12 I think he went through an enormous trauma. His  
13 girlfriend's death, his father's death, and his own depression,  
14 and always found a way --

15 THE COURT: I didn't ask the expert about those  
16 traumas because I didn't think he had particularly, he mentions  
17 them in his report, but it wasn't a focus. But, I'm not sure  
18 how much weight, if any, I should put on them, and I'll tell  
19 you why, and then you can respond.

20 So, undoubtedly the death of his girlfriend in 9/11  
21 was very traumatic. But, he turned his life around in that  
22 respect, and he entered into a loving relationship with another  
23 fine woman, and he married her and had children and was from  
24 all reports a good father and so forth.

25 So he overcame that from all objective indicia in the

1 way that other people overcome the traumas that all of us in  
2 life sooner or later encounter.

3 With respect to his father, which again, I don't mean  
4 to minimize at all, but my understanding is that his father  
5 killed himself at the age of something like 67, I believe,  
6 because he was in great pain from incurable cancer. And so it  
7 was -- this is unfair, perhaps -- but as a form of euthanasia,  
8 and he left a note indicating that so to speak. And so,  
9 undoubtedly, when one loses a parent that one is close to, that  
10 has traumatic effects. I don't mean to minimize that. But it  
11 wasn't -- I'm having some difficulty associating either of  
12 those events with the pathological gambling.

13 MR. SHECHTMAN: Let me say this. If I was sitting  
14 where you were, I could add a point to that, which is his  
15 gambling began before Cat's death, and indeed he lost \$2  
16 million before Cat's death. But having said that, I would add  
17 the following. That was for Andrew Caspersen an  
18 extraordinarily traumatic event. You have Mrs. MacRae's  
19 description of it, you have Andrew's mother's description of  
20 it, of really a sort of almost a year-long suicide watch.

21 And the story of his father's death is more  
22 complicated. It is alluded to in Dr. Goldman's letter. There  
23 were, as Dr. Goldman says, financial improprieties connected to  
24 that. So the reason for the suicide that is given in press  
25 accounts I think is not the full story of that event, and this

1 was a reverential relationship, and for good reason. If one  
2 knows of Ben Caspersen, he was as philanthropic a man as one  
3 could find. And whether Princeton or Harvard --

4 THE COURT: I've forgiven him that.

5 MR. SHECHTMAN: And it was a real trauma, and the full  
6 story of it weighed heavily on Andrew Caspersen.

7 I guess I'd say this. That's as good a woman as there  
8 is. That's the wife I am being rude and pointing to. But, we  
9 all know from the lives of our friends, you can be married to a  
10 very fine person and hide depression. And I think Andrew  
11 Caspersen went through most of his adult life with depression  
12 that was exacerbated by two very real and meaningful events,  
13 and is a piece of this story.

14 But I'll go back to where I started, which is there  
15 are no guarantees. Your Honor has probably sentenced many  
16 people who stood before you and said "I'll never do it again,"  
17 only to see them again at probation hearings. There are no  
18 certainties.

19 It's a bad day to say "I bet." But I bet on Andrew  
20 Caspersen not recidivating.

21 THE COURT: All right. So, let's move to the general  
22 factors that bear on sentence, which are set forth in Section  
23 3553(a) of Title 18. And I think it's worth remembering what  
24 that statute says. This is the mandate of Congress. Unlike  
25 the guidelines, this is binding on the Court.

1           And it begins: The Court shall impose a sentence  
2           sufficient, but not greater than necessary, to comply with the  
3           purposes set forth in paragraph two of this subsection.

4           The Court, in determining the particular sentence to  
5           be imposed, shall consider, and the first item, not the one  
6           referred to as paragraph two, but before we even reach  
7           paragraph two, we have paragraph one: The nature and  
8           circumstances of the offense and history and characteristics of  
9           the defendant.

10          Now, here I think as to the first part of that, there  
11          is no disagreement among counsel that this was an egregious  
12          offense by any possible measure or view. It was a substantial  
13          fraud, it was a fraud that involved the deception of numerous  
14          people who had great confidence and faith in the defendant. It  
15          was a fraud that used people. And it was a fraud that had  
16          continued for a substantial period of time, and might have  
17          continued for even more time, had one of the victims not become  
18          wary.

19          I think there is less agreement, but I think maybe now  
20          substantial agreement nevertheless, on the history and  
21          characteristics of the defendant. Which I think there is  
22          agreement that, other than this very considerable lapse, that  
23          he led a very upstanding life, was an outstanding citizen, very  
24          well regarded for good reason, all set forth in the many  
25          excellent letters that I've received on his behalf. And that



1 his failing was at least in material part a reflection of a  
2 gambling disorder.

3 So unless there is disagreement about that, I'd like  
4 to move to the paragraph two. But let me find out if there is  
5 anything further either counsel wants to say about paragraph  
6 one.

7 MR. SHECHTMAN: Nothing, your Honor.

8 MS. MAGDO: Just briefly, your Honor. You mentioned  
9 that the crime was committed in material part to feed the  
10 gambling addiction. And I know that the defense has  
11 characterized this as mere serendipity, but I don't think it's  
12 just bad luck when a fraudster pays off a \$2 million apartment  
13 that's leveraged to the hilt entirely with crime proceeds, and  
14 at the same time purchases a \$3 million -- \$3.2 million home in  
15 Westchester, at around the same time.

16 I think it's just a little bit disingenuous to say  
17 that -- they literally used the words "no choice." I just, I  
18 cannot let that stand without comment.

19 THE COURT: I thought there was agreement that he had  
20 diminished capacity, but still had voluntary capacity, and  
21 could have stopped this at any time.

22 But what is also notable is that at times when he had  
23 made a ton of money, and could have paid everyone back, he went  
24 and reinvested that money in another of these extraordinarily  
25 high risk bets, and lost it all. So, that is at least I think

1 strongly indicative of someone who is not playing with a full  
2 deck. Because you can well imagine -- and he had gone through  
3 that process several times before. And so now, he hits it big,  
4 he's in a position to pay off everyone, and I think if I recall  
5 correctly, have about \$50 million left for himself.

6 So, every rational part of his mind would have said  
7 thank God I've escaped, they'll never know, I can go back to a  
8 less stressful existence, and I'll wind up a rich man, and the  
9 whole thing will be over. And instead, goes and repeats the  
10 same high risk betting as he did before.

11 To my mind, that was very strong evidence of the  
12 severity of his gambling disorder.

13 MS. MAGDO: Your Honor, as we've said, we're not  
14 challenging that he had some impairment due to a gambling  
15 disorder. I just don't want the record to reflect that there  
16 was no use of victim money for personal benefit, other than  
17 gambling.

18 THE COURT: At no time was Mr. Caspersen leading the  
19 life of the 99 percent as opposed to the 1 percent. I will  
20 take that as a given.

21 I'm sorry, you had other things?

22 MS. MAGDO: I just had one other thing briefly. Your  
23 Honor referenced the -- I believe you used the word "excellent  
24 letters." And no doubt those are excellent letters. But I  
25 would just like to point out that three of the four people who

1 have known the defendant since birth, namely his three older  
2 brothers, have not written letters. And I think that just  
3 bears mentioning.

4 THE COURT: That's not irrelevant. If I were in your  
5 place, I would be more inclined to emphasize the letters from  
6 the victims that were submitted by the government, which point  
7 out quite eloquently in their own right how much the victims  
8 were hurt by this crime. Not only in their investments, but in  
9 their reputation in the kind of businesses that they were  
10 conducting. All of that was put at risk, and Mr. Caspersen was  
11 quite prepared to put it even more at risk.

12 MS. MAGDO: Oh, absolutely.

13 THE COURT: I think that's -- I'm not sure how much  
14 inference one should draw from the absence of any particular  
15 person writing a letter. I think the Court should pay more  
16 attention to what is before the Court than to what is not  
17 before the Court, is my only point.

18 MS. MAGDO: Certainly. Thank you.

19 THE COURT: Let's turn to Subsection 2 of Section  
20 3553(a). The need for the sentence imposed (A) to reflect the  
21 seriousness of the offense, to promote respect for the law, and  
22 to provide just punishment for the offense.

23 And I read that to mean that under any conceivable  
24 analysis there has to be prison time or (A) would not be  
25 achieved. The big question, of course, is how much prison

1 time.

2 Then we get to (B) and (C). (B) is to afford adequate  
3 deterrence to criminal conduct, and (C) is to protect the  
4 public from further crimes of the defendant.

5 I think (B) when read in context of (C) is talking  
6 about specific deterrence, and (C) is talking about general  
7 deterrence. So, on specific deterrence, this is the point I  
8 raised earlier, I think the disorder cuts both ways. If it is  
9 so severe as everyone, all the psychologists seem to agree,  
10 then at least the argument can be made that that calls for a  
11 higher prison time because it really requires meaningful prison  
12 time to convince the defendant never to do it again.

13 However, all the studies I've read over the years in  
14 many white collar cases, all suggest that that is in fact not  
15 how deterrence, specific deterrence works in white collar  
16 contexts. None of this is hard science or anything like that.  
17 But, there are many studies that suggest that even modest  
18 prison time operates as an effective deterrent on white collar  
19 defendants as a group.

20 And if you exclude sort of professional comment types,  
21 the recidivism rate for white collar defendants who have  
22 received even modest time, it is quite low.

23 So, one turns then to general deterrence. General  
24 deterrence, of course, when the crime is as large as this one,  
25 calls for substantial time. But I'm not sure there is any

1 magic in any given number of years. And in fact, again to talk  
2 about the studies, which are not very scientific at all, but  
3 nevertheless the studies suggest that there is no way to  
4 measure how much more general deterrence, if any, is achieved  
5 by adding two years or five years or 10 years to a prison term.  
6 A meaningful prison term is necessary to have general  
7 deterrence, but how much prison time is really largely a matter  
8 of guesswork, or of taking account of the other factors other  
9 than general deterrence into sentence.

10 So let me stop there. I've covered (B) and (C). Let  
11 me hear what the parties want to say about (B) and (C). I  
12 think here the government is bearing the burden on this, so  
13 we'll hear from the government first.

14 MS. MAGDO: I think, your Honor, we've touched upon  
15 deterrence already. In particular in talking about the  
16 recidivist risks of someone who has a serious mental health  
17 issue. And I do think that that mitigates in favor of a  
18 substantial sentence. I was not implying that there should be  
19 a prison term in order to remove temptations from gambling. It  
20 was a different point.

21 THE COURT: No, I misunderstood your point, but you  
22 clarified it.

23 MS. MAGDO: Okay.

24 THE COURT: Although, just the very image of a prison  
25 warden acting as a conservator was an image I won't likely

1 forget. When I'm in the mood for bad jokes, I will remember  
2 it. But, that was not your point.

3 MS. MAGDO: And your Honor, with respect to general  
4 deterrence, I think it goes back to the first part of  
5 Subsection two, which is the seriousness of the offense, and I  
6 can address that now or later, and just punishment.

7 We've spoken a lot about Mr. Caspersen. We haven't  
8 spoken very much about his victims yet. But, I do think that  
9 we have to -- they are front and center here. I have met with  
10 all but one of them myself personally, and I've seen the impact  
11 that this has had on them. Even doubly worse is the fact that  
12 they didn't feel at liberty to tell the Court about that  
13 themselves.

14 So, I do think that in considering the need for  
15 deterrence, we should also think about the fact that this is  
16 not a victimless crime. This is not just a crime that  
17 benefited the defendant. It also really hurt other real  
18 people. So, that's pretty much all I'd like to say on that.

19 THE COURT: All right. Mr. Shechtman.

20 MR. SHECHTMAN: I'll speak briefly as well, your  
21 Honor. I know those same deterrent studies that your Honor  
22 referred to, and they seem to tell us what Jeremy Bentham told  
23 us long ago, which is lent seems to be less important than the  
24 sentence itself, and the immediacy, and that that's what  
25 deters.

1 But, I want to say one other thing, and that is one of  
2 the things that I think --

3 THE COURT: The only trouble is, half the people here  
4 won't know who Jeremy Bentham is. He didn't play for the  
5 Chicago Cubs, so why should they know.

6 MR. SHECHTMAN: They'll know. But, more seriously, it  
7 couldn't be a more serious afternoon. If you look in this  
8 audience, these are Andrew Caspersen's friends, classmates, not  
9 a single one of them knew that he was a compulsive gambler.  
10 None of them. That's how well he hid it. None of them knew  
11 that he'd blown through 23 million of his own money or he was  
12 stealing from other people, including the good gentleman in the  
13 front row who he tried to steal from, or the gentleman in the  
14 second row that he did steal from.

15 And I say that because if you want deterrence, in  
16 large measure it comes from exposure and humiliation. And  
17 that's what's happened here. And it's happened in spades, it's  
18 happened to people who grew up with him, right, now know the  
19 illness, now know the suffering he inflicted on his wife, all  
20 of whom are as close to his wife as they are to him. And there  
21 was a time in this country when exposure was the punishment,  
22 right. I think today that exposure ought to give the Court a  
23 strong sense that there is deterrence here, because I don't  
24 think any of those people, they all were mortified, they all  
25 couldn't believe -- one of them said I thought it must have

1 been April Fool's Day when I read this, and I looked at the  
2 headline again.

3 But they're all here today because they really do  
4 think this is mental illness, and I really think that exposure,  
5 that humiliation, is a way of guaranteeing the Court that a  
6 lengthy sentence isn't necessary to deter.

7 Specific, general deterrence, who knows. Government  
8 says in its brief that there is a public outcry that justifies  
9 a harsh sentence here. I'm not a great believer in public  
10 outcry. I would say this, without --

11 THE COURT: I'm not going to dwell on that, because I  
12 think that was only a passing remark by the government and  
13 really was not central to their argument. And you did respond  
14 to it.

15 MR. SHECHTMAN: I just --

16 THE COURT: But, just for the record, so to speak, the  
17 one thing no judge in imposing sentence should ever take  
18 account of is immediate public views. The public in the much  
19 broader sense, of course, is ultimately the boss. But  
20 immediate momentary public views should not be taken account of  
21 for two different reasons. One is, the people who are making  
22 an outcry, if they are, which I don't think was necessarily  
23 true in this case anyway, are acting on limited information.  
24 They don't have the benefit of what I have, and what counsel  
25 has, with all the things we've been discussing here today. And



1 it's very notable that many, many studies have shown that in  
2 many high profile cases, where the public as a whole was  
3 calling for a very high sentence, the jury that heard the  
4 evidence and found the defendant guilty, when polled, asked for  
5 a low, lenient sentence. And the difference was because the  
6 jury knew the facts. And the other reason is because the role  
7 of a judge is to apply the law to the facts and reach a  
8 reasoned conclusion.

9 While in a very ultimate sense my boss is the people  
10 of the United States, much what their direction or what the  
11 institution directs judges, the Constitution directs federal  
12 judges to do, is to do their best to apply reason to the legal  
13 and factual issues before them, and not to take account of  
14 anything else.

15 So, I probably went on too long on a matter that's  
16 really very secondary in any event. But, you don't have to be  
17 concerned about that.

18 MR. SHECHTMAN: Let me then next just make one last  
19 point. I take it the notion of general deterrence is were the  
20 public to see a sentence for Andrews that is not severe,  
21 someone would say to themselves, I can get away with a large  
22 theft. And it's hard for me to imagine that anyone would take  
23 that lesson from this case. I don't know that I can say this  
24 better than your Honor did about the fundamental precept of our  
25 legal system being to distinguish between people who make

1 rational choices and people who don't. But, this was not a  
2 rational choice, it was certainly one where capacity was  
3 diminished. And if there is somebody out will who says to  
4 themselves, I can steal, I can buy my island off of Nova Scotia  
5 and I can fool a judge, I reread your Carucci decision this  
6 morning. Goes back to 1999. And I remember the case because I  
7 think remnants of it were still at the U.S. attorney's office  
8 when I was, and if my memory is right, it's a massive scheme on  
9 the stock exchange fraud to trade ahead of customers. And it  
10 looked s like Mr. Carucci was a problem gambler. But, his  
11 cohorts came to him and said we have a great scheme, will you  
12 join. And he said count me in and he joined. And he stood in  
13 court and said geez, I was a pathological gambler, and that's  
14 why I traded ahead with my fellow workers.

15 And I guess if there's people out there who will say  
16 to themselves Andrew Caspersen got leniency and I can fool a  
17 judge into leniency, my response would be not this one, and not  
18 very many judges, if any, in this district that I've ever  
19 practiced in front of.

20 THE COURT: All right. There is only one other  
21 provision of Subsection two, and that is (D), to provide the  
22 defendant with need educational or vocational training, medical  
23 care, or other correctional treatment in the most effective  
24 manner.

25 While the bureau of prisons attempts to give medical

1 care as best it can, the kind of psychological care that would  
2 be called for here is provided, but not probably nearly in the  
3 most effective manner. But, I don't want to dwell on this  
4 because I think it is a very minor aspect of the sentence one  
5 way or the other.

6 The only other part of Section 3553(a) that I thought  
7 counsel might want to comment on, although you have both  
8 briefed this issue, is the disparity issue. The government  
9 argues that in other cases high sentences have been imposed.  
10 The defense argues that those cases are all very different from  
11 the case before the Court here.

12 I have very carefully considered both sides of that  
13 argument, but if there is anything further anyone wanted to  
14 say, this would be your opportunity. Anything further from the  
15 government on that issue?

16 MS. MAGDO: Not on that, your Honor. Thank you.

17 THE COURT: Anything from the defense?

18 MR. SHECHTMAN: No, your Honor.

19 THE COURT: No. Before I hear from the defendant, if  
20 he wishes to be heard, let me hear any final statements that  
21 each counsel wants to make, starting again with the government.

22 MS. MAGDO: Your Honor, as we said earlier, we're not  
23 asking the Court to ignore or dismiss the mental health issues  
24 that the defendant had. But we do submit that they need to be  
25 seen in the entire context of what was going on here. And

1 there are two particularly salient factors that come to mind  
2 when we look at the whole context.

3 One, is what your Honor has already mentioned to some  
4 extent, the egregiousness of the crime. But what I'd like to  
5 focus on in particular is the effect of the victims, the  
6 non-financial effect on the victims. There are at least three  
7 such effects.

8 One is the fact the defendant committed this crime by  
9 stealing the identities of two people, one of those people was  
10 a friend of his, whom he had already defrauded, and he used his  
11 driver's license in an attempt to get another \$50 million  
12 investment in the month that he was arrested.

13 Second, the reputational harm to the victims who have  
14 not come forward. Many of these people, as I noted in my  
15 brief, are themselves investment professionals, and who have  
16 told me that when they know someone as well as they knew  
17 Mr. Caspersen, they make million or multimillion dollar deals  
18 with a handshake because of the level of trust that they have.  
19 And not only do they feel that that trust was abused and  
20 betrayed, but they are very afraid that they themselves will be  
21 publicly exposed and ridiculed for having had the naivete as  
22 people may judge them to have had to enter into this kind of an  
23 arrangement.

24 And third, is the employee at Park Hill Group that  
25 Mr. Caspersen dragged into this mess when one of the investors

1 wanted to have immediate redemption of his investment because  
2 he had become suspicious. Mr. Caspersen created a fake domain  
3 name, a fake e-mail address, he set up a telephone number, he  
4 impersonated someone on the phone, but apparently all of that  
5 not enough. So when the person asked to speak to someone else  
6 at Park Hill Group to verify that the redemption was underway,  
7 Mr. Caspersen turned -- he was at this point a partner, and he  
8 turned to one of the employees and said please get on the line  
9 with this investor and tell them that their redemption is  
10 pending. So, to endanger the reputation and the profession of  
11 a junior employee in that way I think is also particularly  
12 egregious.

13 The second main factor is the fact that Mr. Caspersen  
14 was uniquely positioned to seek help for his addiction. We  
15 don't dispute that he had an addiction, but he had many  
16 opportunities, and he refused them. In particular, I'd like to  
17 focus on the events of late 2012 and early 2013, as we already  
18 have, when he conned two members of his family into giving him  
19 two and a quarter million dollars, proceeded to lose it in  
20 options trading, first tried to blame the brokerage house for  
21 losing the money. But apparently, because those kinds of thing  
22 just don't happen, he was forced to confess to those family  
23 members that he had lost their money in trading. So they very  
24 correctly told him he needed to get help, and he went to see a  
25 psychiatrist.

1           And he did not make the slightest effort to avail  
2 himself at that point. He had already been exposed as a  
3 fraudster. He had already harmed his family. He had already  
4 lost \$19 million of his and his family's money by that point.  
5 I think it's pretty clear that that's a very bad situation to  
6 find yourself in. And what did he do when he went to the  
7 therapist? He lied, he failed to take the therapist's advice,  
8 he went for seven 45-minute sessions and then stopped going.

9           He called six months later to get a refill on a  
10 prescription. The psychiatrist told him you should continue  
11 therapy, I'm not going to prescribe any medication to you until  
12 you do, and he never went back.

13           It's that behavior that we're asking the Court to hold  
14 the defendant accountable for. He had the resources, the  
15 means, the intelligence, and the family support, that very few  
16 addicts have. His family, his wife has stood by him even in  
17 light of what's happened in 2016. There is no reason to think  
18 she wouldn't have stood by him in 2012, if he had enlisted her  
19 help. All the things that he's been doing since March, since  
20 his arrest, inpatient psychiatric treatment, twice a week  
21 individual counseling, attending GA meetings, enlisting the  
22 support of his family. Those things have worked. He hasn't  
23 gambled since then. He hasn't had a drink since then. And  
24 there is no reason to think those things would not have worked  
25 if he had made an effort earlier on.

1           He had a chance. He had a moment of intervention by  
2 outside forces. And he completely refused to do anything. In  
3 the words of the psychiatrist who has been treating him since  
4 March, he didn't even try. And there has to be some  
5 accountability for that failure.

6           Like Carucci that the defendant just cited, your Honor  
7 pointed out that in that case, the defendant did not engage in  
8 anything like a Dostoevskian struggle to rid himself of his  
9 addiction.

10           THE COURT: I remember that guy. He was a  
11 contemporary of Jeremy Bentham.

12           MS. MAGDO: And similarly, here, there was no  
13 struggle, Dostoevskian or otherwise, there was not even a  
14 meaningful effort.

15           For all the addicts who have struggled and who have  
16 been in and out of treatment, who have made real efforts, and  
17 yet cannot overcome their addiction, there has to be justice  
18 for someone who had the means, the support, the resources, the  
19 education, to know that he needed to get help. And refused.

20           THE COURT: Thank you. Let me hear from defense  
21 counsel.

22           MR. SHECHTMAN: Judge, I will not speak at length, but  
23 I hope what I say will help the Court and Mr. Caspersen.

24           In another courtroom I would begin by telling the  
25 judge that the sentencing guidelines are a failure and should

1 not be our guide today. Your Honor, however, knows that quite  
2 well. Sentencing is a time for moral judgment, and a grid  
3 cannot capture the complexity of a life.

4 In another courtroom, I might discuss the neuroscience  
5 literature on pathological gambling. Dr. Potenza has done that  
6 today. Suffice it to say we know far more today than we did 10  
7 years ago, and we'll know far more in 10 years than we know  
8 today.

9 But what is beyond dispute is that pathological  
10 gambling is a mental illness. That does not mean that  
11 Mr. Caspersen's actions were involuntary. It does not excuse  
12 his actions. Stealing \$38.5 million from family and friends is  
13 inexcusable. But his illness should affect how one assesses  
14 his culpability, and should affect it for the reasons that your  
15 Honor said earlier.

16 If there is any doubt that these crimes arose from  
17 mental illness, I remind you of these undisputed facts. Andrew  
18 Caspersen lost \$23 million of his own money betting options.  
19 Andrew Caspersen's trading, his coin flips were doomed to  
20 failure. Mr. Rosen, the options expert, writes they were a  
21 recipe for inevitably losing everything. Again, in Mr. Rosen's  
22 words, only an irrational state, only a person in an irrational  
23 state would embark on and would remain on the path  
24 Mr. Caspersen pursued.

25 Your Honor referred to those trades earlier as high



1 risk. And respectfully, I don't think that's the right  
2 characterization. If you stand here and flip a coin, and each  
3 time you win you double that bet, heads, heads, heads, that  
4 coin's going to come up tails at some point, and you're going  
5 to lose everything. That's what Andrew Caspersen's bets were.  
6 And the crazy thing is, he knew it. He once showed his father  
7 that it didn't seem like the greatest strategy, and he pursued  
8 it, 2007, 2008, all the way until his arrest.

9 Mr. Caspersen may be angry at me for doing this,  
10 because it's a story that he told me that he heard in that  
11 church basement. But there is a fellow who owned a store and  
12 the store had a slot machine in it, and it was rigged. And the  
13 fellow was a pathological gambler. The store owner. And he  
14 played his own slot machine knowing it was rigged, because that  
15 was the action. Pulling that machine. And that was the action  
16 here, flipping that coin. Heads, the stock market's going to  
17 go down, heads it's going to go down. And eventually at the  
18 end of February of this year, it went up.

19 So, as I say, respectfully, this isn't high risk.  
20 This trading pattern bordered on madness.

21 A graduate of Princeton and Harvard Law School, Andrew  
22 Caspersen spent much of his waking hours staring at and even  
23 recording the ticks of the S&P index.

24 Another story he won't be happy with me telling, but I  
25 have this feeling if I walk out of this courtroom and if I

1 don't say everything, that I know I'll be dis-serving the judge.

2 This is a fellow who went with his wife to see  
3 Hamilton, and he spent Hamilton looking at his cell phone to  
4 look at the S&P index so that the people behind him said what's  
5 your problem, sir. And you know what his problem was, I know  
6 what his problem was. And I joked with Ms. Lynaugh there are  
7 10 criteria in the DSM index. I can give you one. If you  
8 can't watch Hamilton without looking at the S&P index, that's a  
9 serious mental illness.

10 What else do we know. We know that his trading  
11 records for 2012 spanned 440 pages, and that's roughly true for  
12 most of these years. We also know that when he stole for the  
13 first time in November of 2014, he had a \$4 million bonus  
14 coming in 19 days, and he couldn't wait 19 days, he couldn't go  
15 19 days without trading.

16 And of course, as your Honor said, he had \$112 million  
17 in his trading account on February 11 of this year, 126  
18 intraday. And he placed a \$103 million bet the next morning,  
19 everything in on a bet that the market would go down. And if  
20 you look at those trading records, that bet was placed at 9:31  
21 that morning. The broker who tolerated all this, the broker  
22 said to him I should spread the trades over the course of the  
23 day, \$103 million in the option market is a big trade. And the  
24 answer was see if you can get it done by 10 o'clock. And he  
25 did. And so he went from 126 million up to betting 103 and

1 quickly down to almost nothing.

2           What else do we know? We know that the commissions in  
3 January alone were \$444,000. This was a very expensive casino  
4 indeed.

5           So, it's not a disputed topic today and maybe I've  
6 spent too much time on it. But this was indeed a severe  
7 gambling disorder.

8           When I think of Andrew Caspersen, I think of -- and  
9 I've said this in what I've submitted to the Court, Alexei  
10 Ivanovich, Dostoyevsky's gambler, who said even as I approach  
11 the gambling hall, as soon as I am two rooms away, I almost go  
12 into convulsions.

13           Andrew Caspersen was Dostoevsky's gambler. Whether it  
14 was to relieve the pressure, whether it was the thrill of being  
15 in the action, what mattered and only mattered in the last few  
16 years was being in the action.

17           Like all compulsive gamblers, like the one I spoke  
18 about who had the slot machine in his store, Andrew Caspersen  
19 believed that his wrongs were temporary, and would be conquered  
20 by persistent betting. He suffered what's been called a  
21 gambler's fallacy, a win was sure to follow from a streak of  
22 losses. Studies show if you ask a pathological gambler if  
23 there is skill involved in playing a slot machine, he will tell  
24 you it is equal chance and skill. A compulsive gambler  
25 believes he's in control when he's out of control. And that,

1 too, is Andrew Caspersen. No matter how many times he lost  
2 everything, he was convinced he would win it all back.

3 These were friends, these were relatives, that he did  
4 not intend to harm, because he thought he would win. And that  
5 was madness again, because he was destined to lose and he hurt  
6 people who were very close to him.

7 He seemed to never understand with these trades, as  
8 they say, what goes up must come down. And that's true of the  
9 stock market.

10 If you read the letters from Andrew's friends, you  
11 find a constant theme. Andrew was the adult in the room, he  
12 was everyone's role model, everyone's moral compass. By  
13 November 2014 when he started stealing from his friends, his  
14 moral compass was broken. He was no longer pointing straight.  
15 He needed to be all in every day.

16 Judge, I'm new to pathological gambling. This is my  
17 second case. I've tried to read as much of the literature as I  
18 could. What I'm more familiar with is a not unrelated illness,  
19 anorexia. As you know, too many young women, and it seems to  
20 be women in our country, and often the brightest, are afflicted  
21 with the disorder. It is an epidemic. And like pathological  
22 gambling, it causes people to act irrationally. Telling an  
23 anorexic to eat is like telling a compulsive gambler to stop  
24 betting. Were it so easy. Like pathological gambling,  
25 anorexia often kills. Part of the motto of Gamblers Anonymous

1 is this: Many pursue it into the gates of prison, insanity, or  
2 death. The two disorders are akin in this way as well.  
3 Neither is a moral failing. We'll learn more about both in the  
4 next decade. But what we know should teach us not to judge  
5 those who are afflicted too harshly.

6 A European essayist has written these words: The test  
7 of one's humanity is whether one is able to accept this fact  
8 not as lip service, but with the shattering recognition of  
9 kinship. There but for the grace of God go I.

10 Why was Andrew Caspersen afflicted? I don't know.  
11 Dr. Potenza doesn't know. Dr. Goodman doesn't know. In our  
12 lifetime we'll probably never know. But afflicted he surely  
13 was.

14 When Andrew Caspersen first came to see me after his  
15 hospitalization, my office was close to his Park Hill office  
16 where he worked. He came with his hat pulled over his eyes.  
17 He was afraid he would bump into a colleague on the street, and  
18 he feared their disapproving looks. He was deeply ashamed. He  
19 remains ashamed, but he's now met with several of the victims,  
20 and their lawyers, and tried to explain his conduct to them.  
21 He has cried and asked for their forgiveness.

22 Because of GA, Dr. Goldman, his wife, and his many  
23 friends, Andrew holds his head up higher now and doesn't hide  
24 his face.

25 He has lost his career, the SEC has barred him from

1 the securities industry, and he has lost much more. But  
2 slowly, he's regained his self worth, and I truly believe that  
3 slowly he has regained his good judgment.

4 In a word, Andrew Caspersen is not the same man who  
5 was arraigned in this building seven months ago and then rushed  
6 to a suicide watch. He has stopped gambling, he has stopped  
7 drinking, he has attended GA and AA regularly, his sponsors are  
8 here today to support him as they have this past seven months.

9 They know in 2016 no drug, no elixir exists to treat  
10 pathological gambling. The treatment that may work best is GA.  
11 And I've said it before today, men and women coming together,  
12 often in a church basement, to share and reinforce their  
13 commitment to sobriety.

14 Andrew has also seen an experienced therapist  
15 regularly, and benefited greatly from their relationship. As  
16 Dr. Goldman writes, he's been through therapy honestly and  
17 seriously. With therapy comes insight, and Andrew has gained  
18 valuable insight.

19 He's also reconciled with his mother and his wife.  
20 Their anger towards him has been replaced with their pleas for  
21 leniency. And Andrew is now the doting father of two young  
22 children, who had lost his full attention when his attention  
23 was rivetted on the S&P index.

24 Judge, you've always recognized that even when the  
25 guidelines were their most procrustean, that sentencing is a

1 day of moral reckoning which takes into account all aspects of  
2 crime and the offender. Andrew Caspersen is an uncommonly good  
3 man who lost his way. I know you will judge him fairly.

4 I thank the Court.

5 THE COURT: Thank you very much. Now let's hear from  
6 the defendant, if he wishes to be heard.

7 THE DEFENDANT: Your Honor, I've committed serious  
8 crimes and frauds. I have no one to blame but myself. My  
9 victims include lifelong friends, former colleagues, my former  
10 employer, my mother, my brother, and my wife. All of these  
11 people had one thing in common. They trusted me. And I abused  
12 that trust in immoral and illegal ways so that I could gamble.  
13 I lost their money, I abused their friendships, I destroyed my  
14 family's name. I humiliated my wife, and I subjected my  
15 children to the future knowledge that I did all of this.

16 There has been a lot of talk about compulsive gambling  
17 today. While it explains what I did, I know in no way does it  
18 excuse it, and it certainly does not take away any of the  
19 financial or emotional devastation I brought to my victims.

20 It is, I learned, a cautionary lesson for a compulsive  
21 gambler watching this hearing, what path to take before you get  
22 to the stage where victims are defrauded. The first path is  
23 what I did for almost 20 years. I chose gambling over  
24 everything. Over everything I loved and treasured. I chose it  
25 over my morals, my conscience, my relationships, my family, my

1 career, my wife, my children, and eventually the law. I was  
2 willing to do anything to continue, and eventually I did.

3 The second path that a compulsive gambler could take  
4 is what I've tried to take since my arrest. It's involved  
5 psychotherapy, honesty, most importantly Gamblers Anonymous.  
6 Yes, this path I took after I was arrested, after I was  
7 publicly humiliated, that's what -- that's what it took for me.  
8 I wasn't willing to seriously stop in 2012 or 2013 or 2001. It  
9 wasn't until outside forces intervened and put me in jail, and  
10 then put me in the psychiatric ward, that I realized enough was  
11 enough, and I couldn't continue down this path.

12 The only thing worse than committing all these frauds  
13 against all these people I loved would be not to learn from it  
14 and actually go out and gamble and drink again.

15 I stand before you asking for mercy. I don't know  
16 what the right sentence is for what I did, but I do know for  
17 the rest of my life, regardless of this sentence, I will be  
18 making amends.

19 As for the risk of relapse, it's always possible for  
20 an addict. The numbers are not great. But I do know in the  
21 program that I've participated in, many times a week, the  
22 people who go through the steps and the people who attend  
23 succeed. It is, the big book says, rarely has someone who's  
24 followed our steps thoroughly failed. I intend to follow those  
25 steps thoroughly one day at a time. I am finally on the right



1 path.

2 I am terribly sorry. I could not be more sorry that  
3 it took the devastation that I brought upon these victims to  
4 get to this right path. I'm not going to waste the opportunity  
5 now that I am. Thank you.

6 THE COURT: Thank you very much. So, a point that  
7 this Court has made before, and that Mr. Shechtman also picked  
8 up on, is that a sentence more than anything else is a moral  
9 judgment.

10 Among my many other problems with the guidelines,  
11 putting aside their irrationality, putting aside their  
12 draconian far too punitive approach to all crimes, not just  
13 white collar crimes, putting aside their very real  
14 responsibility for the portion of the mass incarceration of  
15 which this country should be so ashamed, is the fact that they  
16 regard sentencing as an exercise in bean counting, as opposed  
17 to one of the most difficult tasks that those fallible human  
18 beings we call judges have to undertake, which is a moral  
19 judgment on a fellow human being.

20 But, Congress, in its wisdom in enacting Section 3553,  
21 has very clearly recognized the moral judgments involved,  
22 because they put first and foremost that the Court must focus  
23 on the nature and circumstances of the offense, in this case  
24 egregious, and history and characteristics of the defendant, in  
25 this case impaired. And they direct how the Court is to

1 resolve that tension. And also to take account of the somewhat  
2 more abstract, but still very fundamental purposes, of  
3 sentencing such as deterrence, just punishment, and the like.

4 By decreeing that the Court shall impose a sentence  
5 sufficient, but not greater than necessary, to comply with  
6 these various purposes, that's an expression of a moral  
7 judgment, too. That's an expression of the notion that even in  
8 this cruel world where people commit, as the defendant has  
9 here, terrible offenses, the punishment of prison is not one  
10 that can ever be justified beyond the purposes that Congress  
11 has specified. It can never be an act of revenge, it can never  
12 be an act of gratuitous expression of outrage. Life is too  
13 precious to permit that kind of sentence.

14 So how does one apply all that to this case. The  
15 guideline range of 15 years or so is absurd. The probation  
16 officer, sort of cutting the baby in half, recommends a  
17 sentence of about seven and a half years. And there is a  
18 certain rough justice to that for, as the government points  
19 out, one cannot overlook not just the size of the fraud, but  
20 also the real impact on victims of the fraud. And the fact  
21 that the crime was committed by a person who had so many  
22 benefits, so many gifts, so many opportunities to say I'll stop  
23 and did not.

24 But, having said all that, in addition to his very  
25 real gambling disorder, which I am quite convinced very

1 seriously impacted his exercise of rational control and  
2 rational decision making, there is also the fact that no  
3 purpose will be served by letting him rot in prison for years  
4 on end. It will serve no purpose that the Court can justify.

5 The conclusion is that there must be a serious prison  
6 sentence here, but not the kind that the guidelines suggest.

7 The sentence of the Court, therefore, is that the  
8 defendant is sentenced to four years in prison -- 48 months --  
9 to be followed by three years of supervised release on terms  
10 that I'll get to in a moment. Restitution will be ordered in  
11 the amount of \$27,831,791.06.

12 This is without prejudice, of course, to the claims  
13 that Mrs. Caspersen has made which I will resolve in a separate  
14 order.

15 And there is also a mandatory special assessment of  
16 \$200.

17 By the way, the sentence is concurrent on all counts,  
18 on both counts.

19 The terms of supervised release are: First, the  
20 mandatory conditions that the defendant shall not commit  
21 another federal, state or local crime; that the defendant shall  
22 not illegally possess a controlled substance; that the  
23 defendant shall not possess a firearm or destructive device;  
24 that the defendant shall cooperate in the collection of DNA.

25 But the one other mandatory condition, the mandatory

1 drug condition is suspended because I will impose instead a  
2 special condition requiring both drug testing and alcohol and  
3 drug -- excuse me, both alcohol and mental health treatment.

4           There will also be imposed the standard conditions of  
5 supervision one through 13, they appear on the face of the  
6 judgment, and will be gone over with the defendant by the  
7 probation officer when he reports to begin his period of  
8 supervised release.

9           And then there are the special conditions: First,  
10 that the defendant shall participate in a mental health  
11 treatment program approved by the probation office, on the  
12 standard terms and conditions. Second, that the defendant will  
13 participate in an alcohol treatment program as prescribed by  
14 the probation officer on the standard terms and conditions.  
15 Third, that the defendant shall provide the probation officer  
16 with access to any requested financial information.  
17 Particularly, well, any requested information financial  
18 information, including trading information. Fourth, that the  
19 defendant shall not incur new credit charges, open additional  
20 lines of credit, or open securities trading accounts without  
21 the approval of the probation officer, unless the defendant is  
22 in compliance with the installment payment schedule. Fifth,  
23 that the defendant shall pay 20 percent of his gross monthly  
24 income towards the restitution requirement beginning 30 days  
25 after his beginning of his supervised release. Sixth, that the

1 defendant will report to the nearest probation office within 72  
2 hours of his release from prison, and he will be supervised by  
3 the district of his residence.

4 I will enter a separate order specifying the more  
5 particularized terms of the restitution. And there is a  
6 forfeiture to which the defendant has previously agreed.

7 So, before I advise the defendant of his right of  
8 appeal, and we set a surrender date, is there anything else  
9 that either counsel needs to raise with the Court?

10 Yes, ma'am.

11 MS. MAGDO: Your Honor, with respect to the  
12 restitution, the government would respectfully ask the Court to  
13 hold off on making a restitution order. Even in the PSR, it's  
14 noted that there are some shifting amounts. One victim is  
15 paying back another victim. There may be additional fees that  
16 certain victims are entitled to. Therefore, we would request  
17 an additional 90 days --

18 THE COURT: That's fine. But am I right that that  
19 doesn't really change the 27 million total, it just affects the  
20 allocation?

21 MS. MAGDO: Actually, it does. The amount that the  
22 defendant agreed to was a minimum of 36 million and change.  
23 And that's just the direct loss to the victims. In addition,  
24 certain victims may be entitled to attorneys' fees in  
25 connection with their participation in the criminal

1 investigation.

2 THE COURT: I hear you. So, but sooner than in 90  
3 days you need to make a submission, and if there is any  
4 disagreement about it, then the defense will make a submission  
5 also in less than 90 days, so I can comply with the 90-day  
6 limit that the law sets.

7 MS. MAGDO: Yes.

8 THE COURT: I will hold off on restitution until that  
9 is determined. Anything else?

10 MS. MAGDO: No, thank you, your Honor.

11 THE COURT: Anything further from the defense?

12 MR. SHECHTMAN: Judge, I don't know what your practice  
13 is in terms of recommending an institution.

14 THE COURT: I'm happy to recommend, but it is, as you  
15 know in this day and age, those recommendations are often not  
16 followed by the bureau of prisons. But I have no problem  
17 recommending. Where do you want me to recommend?

18 MR. SHECHTMAN: That's the question. I don't know if  
19 your Honor would allow us until Monday just to think about  
20 that. Otisville is the best for visitation, but there are not  
21 very many beds at the inn.

22 THE COURT: That's fine. Why don't you submit  
23 something in writing on Monday. If the government has any  
24 problems with it, they can submit something on Tuesday and then  
25 I'll hold off entering the judgment until Wednesday.

1 MR. SHECHTMAN: That's great. Thank you, Judge.

2 THE COURT: In terms of a surrender date. Let me ask  
3 my courtroom deputy what she has in mind.

4 THE DEPUTY CLERK: Like Wednesday, January 4?

5 THE COURT: January 4. That's good because that's  
6 after the holidays. Any problem with that?

7 MR. SHECHTMAN: No, your Honor.

8 MS. MAGDO: No, your Honor.

9 THE COURT: 2 p.m. at the designated institution on  
10 January 4, 2017.

11 Before I advise the defendant of his right of appeal,  
12 anything else from defense?

13 MR. SHECHTMAN: Nothing, your Honor.

14 THE COURT: Mr. Caspersen, you have the right to  
15 appeal this sentence. Do you understand that if you can't  
16 afford counsel for the appeal, the Court will appoint one free  
17 of charge? Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Very good. Thanks very much. The Court  
20 will adjourn. There is another matter that counsel are aware  
21 of that we'll take up in 10 or 15 minutes.

22 MS. MAGDO: Thank you, your Honor.

23 o0o

24

25